United States Court of Appeals

for the Second Circuit

APPENDIX

76-4176

UNITED STATES COURT OF APPEALS

FOR THE SECOND DISTRICT

----------x

KIMI SALES, LTD.,

Petitioner,

-against-

NATIONAL LABOR RELATIONS BOARD,

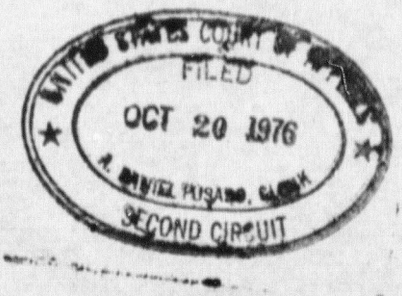
Respondent.

----------x

Index # 76-4176

B P/S

APPENDIX AND INDEX OF PRIOR PROCEEDINGS



FRANK R. McGLYNN, ESQ.,
Attorney for the Petitioner
Office and P. O. Address
60-10 Roosevelt Avenue
Woodside, Queens, N. Y. 11377
212 / 446-1313

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

PETITION FOR REVIEW

EXHIBITS:		DATED
A	Charge filed	5/22/75
B	Complaint and Notice of Hearing	9/30/75
C	Petitioner's Request for Postponement of hearing	10/2/75
D	Respondent's Answer dated	10/8/75
E	Order Rescheduling Hearing	10/20/75
F	Petitioner's Request for Postponement of Hearing	11/19/75
G	Order Rescheduling Hearing	11/25/75
H	Administrative Law Judge's Decision	1/26/76
I	Request for Oral Argument	2/25/76
J	Petitioner's Exceptions to the Administrative Law Judge's Decision	2/26/76
K	Decision and Order of the National Labor Relations Board	4/30/76
L	Minutes of Hearing at Regional Office and annexed thereto are:	
	General Counsels Exhibit #2 - Union Card signed by James Thomas (Exhibit 1 being the charges & proceedings above shown) and	

RESPONDENT'S EXHIBITS:

1	Letter from John L. Shea, C. P. A.
2	Fiat Dealer Financial Statement
3	Respondent's list of employment hearings
	(Entire Minutes of hearing of December 4, 1975 are made part of this Record pursuant to agreement between counsel)

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Kimi Sales, Ltd.
Board Case No. 29-CA-4370

5.22.75	Charge filed
9.30.75	Complaint and Notice of Hearing dated
10. 2.75	Petitioner's request for Postponement of hearing dated
10. 8.75	Respondent's Answer dated
10.20.75	Order Rescheduling Hearing dated
11.19.75	Petitioner's Request for Postponement of Hearing dated
11.25.75	Order Rescheduling Hearing dated
1.26.76	Administrative Law Judge's Decision issued on
2.25.76	Request for Oral Argument dated
2.26.76	Petitioner's Exceptions to the Administrative Law Judge's Decision received,
4.30.76	Decision and Order of the National Labor Relations Board dated
12.4.75	Hearing opened
12.4.75	Hearing Closed

29-C-30
(9/67)

A

NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11241

Telephone 596-3535

May 22, 1975

Kini Sales Ltd.
55-11 Northern Blvd.
Woodside, N.Y. 11377

Re: Kini Sales Ltd.

Case No.: 29-CA-4370

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended, A copy of the charge is herewith served upon you.

The investigation of this case has been assigned to Harold Weinrich (Telephone No. 596-3312).

We enclose a copy of Form NLRB-4541, pertaining to our investigation and voluntary adjustment procedures.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the Courts. In the event you choose to have a representative appear on your behalf, please have your representative complete "Notice of Appearance" Form NLRB-4701 and forward it promptly to this office.

You are requested to submit promptly a complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge, together with any documents, records, memoranda, affidavits, etc., which support your position and statement of facts.

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CA-4370

Date Filed 5/22/75

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: KINI SALES LTD.

b. Number of Workers Employed: 16

c. Address of Establishment (Street and number, city, State, and ZIP code): 55-11 Northern Boulevard, Woodside, NY 11377

d. Employer Representative to Contact: Jim Kielly

e. Phone No.: YE2-1114(5)(6)

f. Type of Establishment (Factory, mine, wholesaler, etc.): New Car dealer

g. Identify Principal Product or Service: New cars

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about May 21, 1975, the above-named employer, by its officers, agents and representatives, has discharged its employee, JAMES THOMAS, because of his activities on behalf of Local 239, International Brotherhood of Teamsters.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Local 239, International Brotherhood of Teamsters

4a. Address (Street and number, city, State, and ZIP code): 252-17 Northern Boulevard, Little Neck, N.Y. 11363

4b. Telephone No.: BA5-8200-1-2

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters, General Automotive Electronics, Synthetic and Specialty Products, Drivers, Helpers Warehouseman

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Gerald Cornillo (Signature of representative or person filing charge) Business Representative (Title, if any)

Address 252-17 Northern Boulevard, Little Neck, New York 11363 BA5-8200-1-2 (Telephone number) May 22, 1975 (Date)

Form NLRB-4701
(7-68)

National Labor Relations Board
NOTICE OF APPEARANCE

NATIONAL LABOR RELATIONS BOARD

In the Matter of

KIMI SALES, LTD

CASE NO. 29-CA-4370

TO: (Check one box only)1/

[XX] Regional Director

[ ] Executive Secretary
National Labor
Relations Board
Washington, D. C. 20570

[ ] General Counsel
National Labor
Relations Board
Washington, D. C. 20570

The undersigned hereby enters his appearance as representative of KIMI SALES, LTD.

in the above-captioned matter.

Signature of representative (please sign in ink)	Representative's name, address, zip code (print or type)
Frank R. McGlynn	FRANK R. McGLYNN, ESQ. 60-10 Roosevelt Avenue Woodside, Queens, NY 11377
Date: May 29, 1975	Area Code: 212 / Telephone Number: 446-1313

1/ If case is pending in Washington and Notice of Appearance is sent to the General Counsel or the Executive Secretary, a copy should be sent to the Regional Director of the Region in which the case was filed so that his records will reflect the appearance.

GPO 927-003

NATIONAL LABOR RELATIONS BOARD

----------x

In the Matter of CASE #29-CA-4370

KIMI SALES, LTD.

----------x

NATIONAL LABOR RELATIONS BOARD
Region 29
16 Court Street
Brooklyn, New York 11241

ATT: MR. HAROLD WEINRICH

Dear Mr. Weinrich:

We are in receipt of your letter and alleged Complaint dated May 22nd, 1975 and we want to respond to same as promptly as possible since there would appear to be no substance in the matter whatsoever. We were unaware completely of any Union activity whatsoever and further have received no notice of anything in this regard.

The pure and simple fact is that there were a number of persons laid off due to the fact that economically the service area of the operation was causing severe losses in the business operation. Our Accountant had advised us that the service area of the business was causing such losses as to be a serious problem if it were to continue. We are enclosing a letter from John L. Shea of the firm of Fusco and Shea, Certified Public Accountants, dated May 29, 1975 which details an operating loss in the service department as he had previously indicated in the sum of $28,972 dollars. This confirms the discussion held on May 12th, 1975, and my attorney advised me to secure such letter from the Accountant giving specific details concerning this. We are annexing a copy of such confirmation letter and marking same Exhibit 'A'.

Our records will clearly indicate that on May 16th, 1975 we laid off a Class 'B' mechanic and also a Class 'C' mechanic. The purported Complainant herein, James Thomas was given notice on May 21st that he was to be laid off effective May 21, 1975, as a Class 'A' mechanic. In addition the service advisor was also laid off the same day; however, he had two days work to be completed so his last day was the 23rd of May. The very fact is that our records would indicate also that the Complainant, James Thomas, was the last man hired at our premises, and in normal circumstances would have been the first let go. As indicated the situation was strictly a question of economics in that the severe fin ancial losses in the service section of the operation was prejudicing the entire business operation which includes the sale of new and used cars on an adjacent location.

In any event we wish to specifically reiterate that as thoroughly detailed in Mr. Shea's statement the reason for the employees that were let go was strictly economical, as further illustrated by the fact that other employees were released by us prior to the alleged Complainant herein. Anything that was done had no relation whatsoever to any purported Union activities since we were totally unaware that such a fact ever existed.

In view of all of the above we respectfully request that this unsupported and poorly taken allegation and complaint be dismissed in its entirety. Should you require any substantiation of the economic situation regarding the service area we would be more than happy to produce same.

Respectfully yours,

THOMAS KIELY, Secretary
KIMI SALES, LTD.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

Recd 10/2/75

KIMI SALES, LTD.

and

Case No. 29-CA-4370

LOCAL 239, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

B

COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 239, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 239, that Kimi Sales, Ltd., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Local 239 on May 22, 1975, and served by registered mail upon Respondent on or about May 22, 1975.

2. Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

3. At all times material herein, Respondent has maintained its principal office and places of business at 57-01 Northern Boulevard, Woodside, County of Queens, in the City and State of New York, herein called the Sales Office, and at 57-11 Northern Boulevard, Woodside, County of Queens, in the City and State of New York, herein called the Service Department, where it is, and has been at all times material herein, engaged in the retail sale and servicing of new and used automobiles, automobile parts, and related products.

4. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its retail operations, derived gross revenues therefrom in excess of $500,000 from the sale of automobiles, automobile parts, and related goods and materials.

5. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Sales Office and Service Department, automobiles, automobile parts, and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its Sales Office and Service Department in interstate commerce directly from states of the United States other than the State of New York.

6. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

7. Local 239 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

8. Thomas Kiely, Jim Kiely and John Kiely are, and have been at all times material herein, the secretary, service department manager and a corporate officer, parts department manager and a corporate officer, respectively, of Respondent, acting on its behalf, and agents thereof.

9. On or about May 21, 1975, Respondent laid off its employee, James Thomas.

10. Since the date of the layoff of the employee as described above in paragraph 9, Respondent has failed and refused to recall, or offer to recall, said employee to his former or substantially equivalent position of employment.

11. Respondent laid off, and thereafter failed and refused to recall, its employee, James Thomas, as described above in paragraphs 9 and 10, because said employee joined and assisted Local 239 and engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection.

12. By the acts described above in paragraphs 9, 10 and 11, and by each of said acts, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

13. By the acts described above in paragraphs 9, 10 and 11, and by each of said acts, Respondent discriminated, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

14. The acts of Respondent described above in paragraphs 9, 10 and 11, occurring in connection with the operations of Respondent, described above in paragraphs 2 through 5, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 19th day of November, 1975, at 10 a.m., at 16 Court Street, fourth floor, in the Borough of Brooklyn, City and State of New York, and on consecutive days thereafter until concluded, a hearing will be conducted before a duly designated Administrative Law Judge of the

National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement Of Standard Procedures In Formal Hearings Held Before The National Labor Relations Board In Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so, all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York, this 30th day of September, 1975.

Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

29-C-5a
(1-65)

NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11241

Telephone (212) 596-3535

KIMI SALES LTD. 29-CA-4370
Case Name and Number

COMMERCE QUESTIONNAIRE

/ Please return completed questionnaire promptly to the Twenty-Ninth Regional office of the National Labor Relations Board, at the address listed above. If you have any question concerning the information requested, please communicate with the staff member designated in the accompanying letter./

1. The undersigned firm is a: (Check appropriate one) - a) Corporation X b) Partnership___ c) Individual Enterprise___ which was incorporated, or registered in N. Y. State during 11/14/61 (Year).

2. FOR CORPORATIONS:

Name as set forth on Certification of Incorporation:

KIMI SALES, LTD.

Names and addresses of parent and subsidiary corporations, if any:

N ONE

FOR PARTNERSHIPS:

Names and addresses of all partners: -----

FOR INDIVIDUAL ENTERPRISES:

Name as it appears on certificate of doing business: ----

3. Names of other corporations or enterprises, not previously listed above, which are operated in connection with the undersigned:

N O N E

4. Name and address of any trade or employer-association with which the undersigned firm is affiliated:

S A M E

5. General nature or type of business: (check which one)

Manufacturer____ Wholesaler____ Retailer____

Trucking____ Communications____ Transit System____

Taxicab____ Service____ Public Utility____

News Publisher____ Hotel-Motel____ Office or

Industrial Building____ Building Construction____

Other (please specify) ____

6. General Type of products handled or nature of services performed

NEW CAR SALES AND SERVICE

7. Principal place of business located at: 57-01 Northern Blvd., Woodside, Queens, NY

Branches located at: 55-11 Northern Blvd., Woodside. NY

Auto Service and Parts

8. Approximate number of persons employed: 27 including office & management

29-C-5a
(1-65)

9. Check whether figures furnished below are for:

Calendar Year [X] Fiscal Year [ ] Past 12 Months [ ]

(Check appropriate boxes)

a. Gross annual revenue from sales: $500,000 or more [X]

Less than $500,000 [ ]

If less than $500,000, please state amount $_____

b. Annual purchases of goods, supplies, commodities or services purchased directly from other firms located outside the State:

$50,000 or more [X]

Less than $50,000 [ ]

If less than $50,000, please state amount $_____

c. Annual purchases of goods, supplies, commodities, or services purchases from firms located inside the State, but which originated outside the State:

$50,000 or more [X]

Less than $50,000 [ ]

If less than $50,000, please state amount $_____

d. Annual revenue from sales of goods, products, or commodities delivered directly to points outside the State, or from services to firms located outside the State:

$50,000 or more [X]

Less than $50,000 [ ]

If less than $50,000, please state amount $_____

e. Annual revenue from sales of goods, products, or commodities delivered to, or from services performed for, firms located within the State, which firms, in turn, made sales to customers located outside the State:

$50,000 or more [ ]

Less than $50,000 [X]

If less than $50,000, please state amount $ No records maintained

4-65)

(Check appropriate boxes)

10. Engaged in performance of contracts to provide goods or services related to national defense:

Yes [ ]

No [XX]

During the past year the amount of such contracts totalled $_____.

11. The name and title of the person who is best informed about the operation of the firm's business is:

THOMAS KIELY

12. The firm concedes that it is engaged in interstate commerce and subject to the jurisdiction of the National Labor Relations Board:

Yes [X]

No [ ]

KIMI SALES, LTD.
Firm Name

May 29, 1975
(Date)

By [signature]
(Name and Title)

October 2, 1975

SAMUEL M. KAYNARD
Regional Director, Region 19
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

Re: Case No. 29-CA-4370
Kimi Sales, Ltd.

Dear Mr. Kaynard:

Please be advised that I am the attorney for Kimi Sales, Ltd. I am in receipt of the notice of hearing and complaint scheduled for November 19, 1975 at 10 a.m.

On November 19, 1975 at 9:30 a.m., I am scheduled to appear in Civil Court, Queens County in the mateer of TAJ Air Conditoning & Refrigeration v. Royal Typographers. This matter was on the calendar on two previous occasions and was adjourned to November 19, 1975. Same is also a jury trial.

I therefore respectfully request an adjournment to the week of December 1, 1975 except for December 2, 1975 since I am scheduled to appear in Supreme Court.

Please advise as to the new hearing date.

Thank you for your courtesy and attention to this matter.

Very truly yours,

FRANK R. MC GLYNN

ar

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD - REGION 29

KIMI SALES, LTD.,	:	
and	:	Case #29-CA-4370
LOCAL 239, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA	:	

KIMI SALES, LTD., Respondent, appearing by their attorney FRANK R. McGLYNN, in Answer to the Complaint before the National Labor Relations Board responds as follows:

1) It is specifically denied that Respondent has engaged in or is engaging in any unfair Labor Practices effecting commence or otherwise, and in no way have violated 29 U.S.C., Sec. 151, et seq. It is specifically denied that there have been any violations which in the past, or presently, incur the jurisdiction of the National Labor Relations Board.

2) That the allegations contained in Paragraph 7th of

2) That the allegations contained in Paragraph 7th of the Complaint are denied on the grounds that the Respondent does not have sufficient knowledge or information to form a belief concerning such allegations

3) That concerning Paragraph 8th of the Complaint the following named persons are the officers and directors of KIMI SALES, LTD.:

JAMES P. KIELY	-	President
JOHN KIELY, JR.	-	Vice-President
THOMAS KIELY	-	Secretary
HELEN ROMANO	-	Treasurer

4) Concerning the allegations of Paragraph 10th of the Complaint, as will be further indicated in the affirmative defenses hereinafter set forth, the employee in question was only one of four that were terminated at the same time due to financial reasons and having nothing to do whatsoever with any purported Union activity, which at no time was transmitted to the employer, Respondent, and therefore such alleged Union activity if any had

no bearing whatsoever with the actions of the Respondent.

5) Denies each and every allegations in Paragraphs numbered 11, 12, 13 and 14.

AS AND FOR A FIRST ARRIRMATIVE DEFENSE

1) Respondent was unaware completely of any Union activity whatsoever and further has received no notice of anything in this regard.

The pure and simple fact is that there were a number of persons laid off due to the fact that economically the service area of the operation was causing severe losses in the business operation Our Accountant advised us that the service area of the business caused such losses as to be a serious problem if it were to continue. We are attaching a letter from John L. Shea of the Firm of Fusco and Shea, Certified Public Accountants, dated May 29, 1975 which details an operating loss in the service department as he had previously indicated in the sum of $28,972 dollars. This confirms the discussion held on May 12th, 1975, and my attorney advised me to secure such letter from the Accountant giving specific details concerning this. We are annexing a copy of such confirmation letter and marking same Exhibit "A".

Exhibit "A".

Our records will clearly indicate that on May 16th, 1975 we laid off a Class 'B' mechanic and also a Class 'C' mechanic. The purported Complainant herein, James Thomas was given notice on May 21st that he was to be laid off effective May 21, 1975, as a Class 'A' mechanic. In addition the service advisor was also laid off the same day; however, he had two days work to be completed so his last day was the 23rd of May. The very fact is that our records would indicate also that the Complainant, James Thomas, was the last man hired at our premises, and in normal circumstances would have been the first let go. As indicated the situation was strictly a question of economics in that the severe financial losses in the service section of the opera-

tion was prejudicing the entire business operation which includes the sale of new and used cars on an adjacent location.

That as thoroughly detailed in Mr. Shaa's statement the reason the employees were let go was strictly economical, as further illustrated by the fact that other employees were released by us prior to the alleged Complainant herein. Anything that was done had no relation whatsoever to any purported Union activities since we were totally unaware that such a fact ever existed.

WHEREFORE, it is prayed respectfully that the purported Complaint herein be dismissed in all respects since the factual circumstances indicate that the dismissal of the Complainant had no relationship whatsoever with Union activity and that the case has no substance in fact and law.

Frank R. McGlynn

FRANK R. McGLYNN, Attorney for Respondent

STATE OF NEW YORK)
COUNTY OF QUEENS) ss.:

THOMAS KIELY, being duly sworn, deposes and says that Deponent is the Secretary of KIMI SALES, LTD. the corporation named in the within action; that Deponent has read the foregoing Answer and knows the contents thereof; and that the same is true to deponents own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because KIMI SALES, LTD. is a New York Corporation. Deponent is an officer thereof, to-wit, its Secretary. The grounds of deponent's belief as to all matters not stated upon deponent's own knowledge are that Deponent is personally familiar with all the business and records of the within corporation.

Thomas Kiely

THOMAS KIELY, Secretary

Sworn to beforemme this
8th day of October, 1975.

Frank R. McGlynn

FUSCO & SHEA
Certified Public Accountants
THE CONTINENTAL BUILDING
107-21 QUEENS BOULEVARD
FOREST HILLS, NEW YORK 11375
212 268-6643

VINCENT L. FUSCO, CPA
JOHN L. SHEA, CPA
CLIFFORD F. BAUMANN, CPA

MEMBERS
AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS

May 29, 1975

Mr. Thomas Kiely, Secretary
Kimi Sales, Ltd.
57-01 Northern Boulevard
Woodside, New York 11377

Dear Mr. Kiely,

We wish to supplement our oral review of your company's financial position as of April 30, 1975.

During our discussion held at your office on May 12, 1975, we advised you of a net loss for the four months ending April 30, 1975 in the amount of $5,489. We further advised you that the loss, departmentally, occured as follows:

Operating Income:	New Car Department	$11,287.
	Used Car Department	$1,414.
	Parts Department	$12,093.
Operating Loss:	Service Department	(28,972.)
Net Operating Loss:		$4,172.
Non-operating Deductions (net)		$1,311.
Net Loss		$5,489.

Since the service department losses have been consistent during the current period, we advised immediate steps to reduce the cost of operating your service department. We pointed to the peril of an uncertain market for new cars, coupled with a sub-standard service operation.

Our mutual conclusion was that you would immediately review your service operation with a view toward, at the least, reducing its current operating loss to a manageable figure compared to the overall operation.

We hope that you have taken positive steps to control this weak spot in your operation. Should you require additional information, we would be pleased to meet with you at your convenience.

Very truly yours,

Fusco and Shea

John L. Shea

John L. Shea

Exhibit A

FORM NLRB-857
(6-54)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

KIMI SALES, LTD.

and

LOCAL 239, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Case No. 29-CA-4370

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from November 19, 1975, to December 3, 1975, at 10:00 a.m., same place.

DATED at Brooklyn, New York, this 20th day of October, 1975.

Regional Director,
National Labor Relations Board

☆ U. S. GOVERNMENT PRINTING OFFICE: 1973—522-529

November 19, 1975

Samuel M. Kaynard
Reginnal Director, Region 19
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

F

Re: Case No. 29-CA-4370
Kimi Sales, Ltd.

Dear Mr. Kaynard:

I am in receipt of your notice that the hearing on the above matter is scheduled for December 3, 1975 at 10 A?M. I enclose herewith a copy of a hearing before the Immigration Dept. on the same day. My client, in this case, will receive deportation papers if we do not attend this hearing.

If is respectfully requested that this hearing be adjourned for one day to December 4, 1975.

Please advise me if my requested has been granted.

Very truly yours,

FRANK R. MC GLYNN

ar

FORM NLRB-359
(6-64)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KIHI SALES, LTD.

and

LOCAL 239, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Case No. 29-CA-4370

G

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from December 3, 1975, to December 4, 1975, at 10:00 a.m., same place.

DATED at Brooklyn, New York, this 25th day of November, 1975.

Samuel M. Kaynard

Regional Director,
National Labor Relations Board

☆ U. S. GOVERNMENT PRINTING OFFICE: 1973—522-523

JD-44-76
Woodside, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

KIMI SALES, LTD.

and

Case No. 29-CA-4370

LOCAL 239, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Harold R. Weinrich, Esq., of Brooklyn, NY, for the General Counsel.
Frank R. McGlynn, Esq., of Woodside, NY, for the Respondent.
Mr. Gerald Corallo, Business Agent, of Little Neck, NY, for the Charging Party.

H

DECISION

Statement of the Case

MORTON D. FRIEDMAN, Administrative Law Judge: This case was heard at Brooklyn, New York, on December 4, 1975, based on charges filed on May 22, 1975, and a complaint issued September 30, 1975, alleging that Respondent, Kimi Sales, Ltd., violated Section 8(a)(3) and (1) of the Act. The Respondent's duly served answer, while admitting certain allegations of the complaint, denied the commission of any unfair labor practices.

At the end of the hearing, the parties made oral argument but have not filed briefs. Upon the entire record in the case, including my observation of the witnesses, and upon consideration of the arguments and contentions made by the parties in their oral presentations at the hearing, I make the following:

Findings of Fact

I. The Business of the Respondent

Kimi Sales, Ltd., herein called the Respondent, is a New York corporation with its principal office and place of business in the County of Queens, City and State of New York, where it is engaged in the retail sales and servicing of new and used automobiles, automobile parts and related products. During the year immediately preceding the issuance of the complaint herein, a representative period, the Respondent derived gross revenues from its retail and service operations in excess of $500,000. During the same period of time the Respondent purchased and caused to be transported to its sales and service departments automobile parts and other materials of a value of $50,000, which were transported to the said facilities directly from points outside the State of New York.

It was conceded at the hearing herein, and I find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

It is admitted, and I find, that Local 239, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Facts

James Thomas was first hired as the service advisor-writer by the Respondent in its service department in June 1974. His duties in that capacity are the usual duties of the individual who writes up customers' service requests, and who acts as the liaison between the automobile dealer and the customer in the service department. In January 1974, Thomas resigned his position with the Respondent to begin a business of his own. However, evidently the business did not prosper and he reapplied for employment with Respondent to James Kiely, Respondent's president and head of the service department. At that time Thomas was informed by James Kiely that the position Thomas had occupied formerly had been filled by another individual, but that Thomas could be hired as a Class A mechanic. Thomas accepted this offer and began working for the Respondent at that time. According to Thomas' uncontroverted testimony, a Class A mechanic is one who is able to perform complete automotive work including motor, maintenance and repair, transmissions, electrical work, and any other automobile mechanical work. At the time of Thomas' rehire in March 1975, there were roughly 10 or 11 mechanics in the Respondent's service department, aside from the body shop, two of whom were Class A mechanics in addition to Thomas. Of the 10 or 11 mechanics, 5 or 6 were classified as grades B or C.

These B and C individuals were mechanics who could not perform all of the work that could be performed by Class A mechanics, they not having the necessarry skills for the "A" classification. James Thomas was the last person hired between the time he was rehired in March 1975, and his layoff on May 21, of that year, detailed below.

On May 12, several of the other employees in the service department approached James Thomas in the shop at the morning coffeebreak, and informed him that the men had decided they wanted to be represented by a union. Thomas expressed his willingness to go along with them. During the week that followed, further discussions took place in the shop and the employees reiterated their reasons for desiring union representation.

On Monday, May 19, the men again discussed unionization. However, the two employees who were originally designated to make contact with a representative of the Union were laid off on May 16, the previous Friday. Thereupon, Thomas, either by assent of the other employees, or on his own volition, proceeded across the street to the service department of an automobile dealer other than the Respondent, searched out the shop steward in that service department, and received information from the steward which would enable Thomas to make contact with the representative of the Union. Thomas was given the telephone number of Gerald Corallo, business representative of the Union. During the lunch hour on that day, therefore, Thomas called Corallo and made an appointment to see the latter that evening. When Thomas returned to the shop after speaking to Corallo on the telephone, he informed the other mechanics in the Respondent's service department that he was going to see Corallo that evening.

That night, May 19, between 7 and 8 p.m., Thomas met with Corallo at the latter's office. At the meeting with Corallo, Thomas signed a union card and arranged for a meeting to be held at a later date with all of the mechanics of the Respondent's service department at the union hall. This meeting never took place because on May 21, Thomas spoke to the other mechanics in the Respondent's shop and was informed by these individuals that they were no longer interested in the Union. 1/

At about 9:30 a.m., on that day, May 21, Thomas Kiely, Respondent's general manager and an officer of the Respondent, came to a coffee truck located at the Respondent's premises at the time and asked James Thomas, "Well, how long you been in this country?". Thomas Kiely then walked away without any reply from James Thomas. Approximately one-half hour later, James Thomas spoke to James Kiely, head of the service department, with regard to the union activity of James Thomas and the other employees. James Thomas told James Kiely that the men had been thinking of obtaining

1/ There was no testimony by Thomas or any other witness as to why the men became disenchanted with the union movement. Accordingly, no inference is made with regard thereto.

union representation, but had decided against it and were afraid of losing their working periods. James Thomas then told James Kiely that if the latter had anything against him or any of the men, that he, James Thomas was the man whom the men had selected to obtain union representation for them and to make contact with the Union. James Thomas then asked James Kiely if the latter had "anything against me like laying me off, or /was/ mad or angry at me that I would like to know about it." James Kiely answered, "No, of course not, I'm not." The gist of the conversation was that James Kiely told James Thomas that Kiely was not angry with Thomas and was not laying him off or anyone else. 2/

It should be noted, that on the preceding Friday, May 16, 1975, two mechanics were laid off by the Respondent. They were Hector Jiminez, a Class B mechanic, and Paul Sisto, a Class C mechanic.

On the morning of May 21, James Thomas was finishing work left incomplete by these individuals when they were laid off. At approximately noon on that day James Thomas had finished work on the car that had been left over from the previous Friday, and spoke to John Kiely, an officer of the corporation and evidently the supervising chief mechanic of the service department directly under James Kiely. 3/ This conversation took place in the service office near the parts department of the Respondent's service shop. Thomas asked John Kiely if there was any more work for Thomas to perform that day, otherwise Thomas desired to leave for the day for personal reasons, the shipping of tropical fish which, evidently, Thomas bred and raised as a sideline. John Kiely answered that there was no more work for Thomas and that "My brother Jim is awful mad at you for your part in the union activities, in trying to bring a union in the shop. We don't want a union in the shop and never had. It has been tried in the past and we don't want it." John Kiely than told James Thomas that James Kiely had decided to lay off James Thomas and that James Kiely was in the Respondent's main office in the other building and wanted James Thomas to wait around. Thomas then went back into the shop to collect his tools. 4/

2/ James Kiely and Thomas Kiely, both of whom testified, denied any knowledge of any union activity on the part of the employees in the shop before the Respondent received notice from the Regional Director of the Board that a charge in the instant proceeding had been filed. James Kiely specifically denied any conversation with Thomas as above set forth. Upon my observation of the witnesses, and for reasons hereinafter stated, I do not credit James Kiely's denial that any conversation of this nature occured.

3/ All of the Kielys are brothers.

4/ John Kiely was not called to testifiy on behalf of the Respondent. The conversation above set forth between James Thomas and John Kiely in which the latter told James Thomas that James Kiely was angry at James Thomas for the latter's union activity remains undenied on the record. In view of this, I credit James Thomas in all respects with regard to that conversation.

Sometime later John Kiely called James Thomas back into the service office. James Kiely was present and handed a final check to John Kiely who then turned the check over to James Thomas. Thomas then asked James Kiely why he was being laid off and Kiely answered, "Well, I'm laying you off for ecomonic conditions."

James Thomas then asked for his "pink slip," which was given to him. He then took his tools and left the Respondent's premises. Since that day he has not had any further conversations with any of the Respondent's management personnel, nor has he been offered reinstatement to his job.

There is nothing in the record to indicate that Thomas was in any respect anything less than a competent employee. In fact, during the first week in May 1975, James Thomas was selected by James Kiely to attend a special Fiat School to learn maintenance and repair of new mechanisms which were being installed in the new models of the Fiat automobiles, for which the Respondent is a sales agent. Thomas was sent by Kiely so that the shop would have someone who could handle the new models. No one else was selected to take this course.

In essence, the foregoing constitutes the facts upon which counsel for the General Counsel bases his case. He contends that they establish both knowledge and unlawful motivation, and constitute the basis for a finding of discriminatory discharge of James Thomas.

B. The Respondent's Defense

The defense consists, basically, of testimony and documentary evidence to the effect that the layoff of James Thomas was part of an economic retrenchment necessitated by heavy losses in the service department, which losses were so severe as to peril the Respondent's entire business despite some profits made in the new and used car sales and auto parts departments.

To substantiate its defense, the Respondent presented the testimony of its certified public accountant, John L. Shea, who testified, in substance, that he had been the Respondent's accountant for some years and that after examining the Respondent's books for the first 4 months of 1975, had a discussion on May 12, 1975, with Respondent's general manager, Thomas Kiely, in which Shea explained to Thomas Kiely that there were unusually heavy losses for that period of time in the service department. He further informed Thomas Kiely that if these losses continued, they could eventually force the Respondent out of business. Additionally, Shea advised Thomas Kiley on that date to curtail the service department operations because the service department was spending too much time on warranty work, which should be spaced out to help reduce losses. Upon leading questions from Respondent's counsel, Shea further testified that he suggested to Thomas Kiely that the service department work force should be reduced. According to Shea, Kiely answered that he would review the service operations and make the necessary changes.

Analyses of the figures recited by Shea, and in a letter to Respondent from Shea, shows that every other department of the Respondent's business made a profit for the 4 month period, from January 1, to April 30, 1975. The total profit in these departments came to approximately $24,000. However, the loss in the service department for the same period of time came to almost $29,000, and, after deductions for nonoperating costs of approximately $1,300, the Respondent suffered a net loss for the 4 month period on its overall business of $5,489.

The documentary evidence received during the hearing, including monthly reports made to the car manufacturers, whose automobiles the Respondent sold, supported this testimony given by Shea. Additionally, Shea's testimony was supported by the testimony of Thomas Kiely. Accordingly, because I accept as valid all of the foregoing testimony, with the possible exception of some doubt as to whether Shea actually told Thomas Kiely to reduce the work force in the service department, I find and conclude that the Respondent did suffer a severe loss during the first 4 months of 1975, and that it became necessary for the Respondent to make changes in its service department operations in order to reduce these losses and to make an overall profit in its operations.

According to both Thomas Kiely and James Kiely, shortly after Shea left the Respondent's premises on May 12, the Kiely brothers met in the Respondent's sales office and discussed the situation and decided that they would not only space out the warranty work, which would relieve some of the employees from performing low reimbursement work, and also discussed possible layoff of approximately six service department employees. James Kiely, however, balked at the loss of this many employees in the service department and, after some further discussion, which went on for a few days, it was decided to layoff four individuals in the service department, all of whom were to be mechanics, one from each rank of mechanic A, B, and C, and the service writer, who was actually not an active mechanic, but was also considered a member of management.

According to Thomas Kiely and James Kiely, neither of them had any knowledge of any union activity at that time, and it was left up to James Kiely, who was more familiar than Thomas Kiely with the personnel in the service department, to decide which mechanic in each class was to be laid off. James Kiely testified that he thereupon began to evaluate each group of mechanics to make his selections. For the Class B and C mechanics, after considering the work, the skills and other matters on May 16, James Kiely laid off Class B mechanic, Hector Jiminez, and Class C mechanic, Paul Sisto.

James Kiely further testified that when James Thomas applied for reemployment in March, James Thomas stated that he was undecided what he was going to do in the future, and that therefore, Kiely decided that insofar as the Class A mechanics were concerned, James Thomas, being the most recent Class A mechanic hired, and also because of this relative uncertainty as to the lenght of time which James Thomas would be working for the Respondent, Kiely would lay off James Thomas from the Class A mechanic group of which there were three at the time. There is no question that insofar as hiring time is concerned, James Thomas was the junior of all three Class A mechanics.

The Kielys further testified that the service writer who was laid off, and who was actually a part of management, was laid off 1 week later. The service writer laid off was Rudy Pabon, who was not only a highly skilled and valuable employee, but was also a loyal and good friend of James Kiely. However, Kiely did admit that Pabon had indicated that he was going to leave anyway because he was going into business for himself, and that Kiely knew of this before he notified Pabon that the latter was to be laid off.

In addition to all of the foregoing, by way of defense, Thomas Kiely and James Kiely both testified to the effect that no Class A mechanics were hired from the time that James Thomas was laid off, up to and including the date of the hearing herein, and that, indeed, no hirings were made at all in any classification which would increase the Respondent's service department payroll above that which was in effect after the four layoffs above set forth.

Introduced into evidence was a summary of hirings and layoffs, from May 16, 1975, when Jiminez and Sisto were laid off, through November 24, 1975. From this summarry, it is evident that no Class A mechanics were hired from the time that James Thomas was laid off until the date of the hearing herein. In fact, on June 25, 1975, another Class A mechanic, Fermin Pacheco, quit the Respondent's employ and was not replaced. Thus, it is evident, and I find that the Respondent's payroll did, indeed, decrease with the four layoffs and for the balance of the period of time above set forth.

C. Discussion and Concluding Findings

Although the General Counsel in his oral argument contended that the economic defense of the Respondent was an afterthought and a pretext to cover up the discriminatory discharge of James Thomas, I nevertheless, do accept Respondent's economic contention insofar as I find that the record establishes, on the basis of the credible evidence of Respondent's accountant, Shea, that the Respondent was forced for economic reasons to cut back the cost of its service department operations in order to reduce the net loss suffered by the Respondent during the 4-month period from January 1 through April 30, 1975. I credit Shea's testimony not only on the basis of my observation of him, as he testified, but also by reason of the supportive documentary evidence submitted by the Respondent, consisting of its report to the Fiat Manufacturing Company of the Respondent's operations during that period.

Because of the foregoing, however, there remains the question of whether the selection of Thomas for layoff was discriminatory, and whether the failure of the Respondent to recall Thomas during the period since the layoff, constituted a continuation of such alleged discrimination. Crucial to the resolution of this question is the claim of the Respondent that it had no knowledge of the union activity of James Thomas until it was notified by the Regional Director that a charge had been filed. In the light of the evidence produced by the General Counsel, and especially in the light of the uncontroverted testimony of James Thomas with regard to his conversation with John Kiely on May 21, at approximately noon, I

I find and conclude that the Respondent, in fact, did have knowledge of James Thomas' union activity before he was formally laid off. This conclusion is bolstered not only by the testimony of James Thomas that John Kiely told him that James Kiely was angry with James Thomas for the latter's union activity, but also by reason of the established fact that the total number of employees in the Respondent's service department constituted no more than 10 or 12 individuals. The Board has long held that absent direct evidence as to Respondent's Knowledge of union activity, such knowledge may be deduced when statements and conduct constituting statutorily protected activity have taken place within a small facility such as the Respondent's. 5/

Accordingly, and for the foregoing reasons, I find and conclude not only that the Respondent had knowledge of James Thomas' union activity, but, further, I discredit James Kiely's denial that James Thomas informed him early in the morning of May 21, that it was Thomas who had engaged in union activity on behalf of the employees in the shop. Additionally, I find and conclude that the statement of John Kiely to Thomas Kiely at about approximately noon on May 21, constitutes sufficient evidence of union animus to establish discriminatory motivation for the selection of James Thomas for layoff. While it is true, that James Thomas was the junior of the Class A mechanics in the shop as of the date of the layoff, there is no evidence in the record to establish that the Respondent hired or discharged or laid off on the basis of seniority. A careful examination of the testimony of Thomas Kiely and James Kiely fails to establish that seniority was a shop policy within the Respondent's service department.

In addition, it would seem that the Respondent had suffcient regard for the abilities of James Thomas, as a Class A mechanic, to send him, only a very short period of time before the layoff, to the special class operated by the Fiat Company for the purposes of having an employee in the service department who would have knowledge of the mechanical devices installed in the newest models of the Fiat automobiles which the Respondent sold and serviced. I do not credit James Kiely's testimony in which he belittled this assignment as a means of merely picking up from Fiat some information for distribution to the other mechanics in the shop. Nor do I credit James Kiely's testimony, emphatically denied on rebuttal by James Thomas, to theeffect that when James Thomas was rehired by the Respondent in March 1975, he informed James Kiely that he did not know what he was going to do in the future, or that there was an intimation in the hiring that it was in any way temporary.

Because I have discredited the testimony of James and Thomas Kiely with regard to their denials of knowledge of union activity, I have grave doubts and cannot conclude that the choice of James Thomas as one of the individuals to be laid off was made before the Respondent had any knowledge of James Thomas' union activity. Even were I to accept the Respondent's contention and testimony to the effect that there was a desire to balance the individuals to be retained on the work force in the service department

5/ See Wiese Plow Welding Co., Inc., 123 NLRB 616, 618; Ballard Motors, Inc., 179 NLRB 300, 307.

so that a selection had to be made from each classification of mechanics, I do not conclude that James Thomas was selected by James Kiely as the Class A mechanic for reasons testified by the Kiely brothers.

In coming to the foregoing conclusions, I have fully considered and weighed the fact that there was economic necessity for some retrenchment with regard to the personnel of the service department. I have also taken into consideration the evidence presented by the Respondent, that no additional Class A mechanics were hired from the date that James Thomas was laid off, up to and including the date of the hearing in this proceeding. However, James Thomas' wage rate was $5.63 an hour at the time of his layoff. On August 20, 1975, the Respondent hired a mechanic named Alfaro for $5 an hour, which was only 63 cents less per hour than Thomas was being paid at the time of his layoff. This, even though Alfaro was laid off on September 25, 1975, does indicate that the Respondent did take on a mechanic almost as expensive to the Respondent's operation as was James Thomas, after James Thomas was laid off and the Respondent failed to recall James Thomas. Neither have I failed to consider the upgrading of the front-end mechanic to perform some of the work formerly performed by James Thomas, which would indicate that Respondent sought to keep down its operating costs in the service department.

Accordingly, although the matter is not without some doubt because the Respondent did have economic reasons for reducing its work force in the service department, I find and conclude that by reason of all of the foregoing, the preponderance of the creditable evidence heretofore set forth weighs in favor of a finding that the selection of James Thomas for layoff was discriminatory and in violation of Section 8(a)(3) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III., above, occurring in connection with its operations described in section I., above, have close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in certain unfair labor practices, it shall be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully selected James Thomas for layoff and has failed to recall or reinstate him because he engaged in union activities, it shall be recommended that Respondent offer James Thomas immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights or privileges he

may have enjoyed. Respondent shall make James Thomas whole for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum equal to that which he would have received as earnings from the date of his layoff, May 21, 1975, until he is fully reinstated, less any net interim earnings. Backpay is to be computed in the manner established by the Board in F.W. Wollworth Company, 90 NLRB 289, with interest thereon at the rate of 6 percent per annum to be computed in the manner set forth in Isis Plumbing & Heating Co., 138 NLRB 716.

On the basis of the foregoing findings of fact and upon the entire record I make the following:

Conclusions of Law

1. Kimi Sales, Ltd., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 239, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminatorily laying off and refusing to reinstate James Thomas because of his union activities, Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and 2(6) and (7) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(b) of the Act, I hereby issue the following recommended: 6/

ORDER

Respondent, Kimi Sales, Ltd., its officers, agents, successors, and assigns, shall:

6/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Discouraging membership in Local 239, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by selecting for layoff and refusing to reinstate or recall any employee for engaging in union or other protected concerted activity, or discriminating against employees in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to join, form, or assist, or be represented by Local 239, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing or to engage in other concerted or protected activity for the purposes of collective bargaining, or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to James Thomas immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve, and upon request, make available to the Board or its agents for examination and copying all payroll records, social security payment records and all other reports necessary to analyze the amount of backpay due under this Order.

(c) Post at its premises in Woodside, county of Queens, city of New York, State of New York, copies of the notice attached hereto marked "Appendix." 7/ Copies of said notice on forms provided by the Regional Director for Region 29, of the National Labor Relations Board, after being duly signed by Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof and be maintained by Respondent for 60 consecutive days thereafter in conspicuous places,

---

7/ In the event that the Board's Order is enforced by a Judgement of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.)

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director of Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated at Washington, D.C. JAN 26 1976

Morton D. Friedman
Administrative Law Judge

446-1313

FRANK R. McGLYNN
ATTORNEY AT LAW

60-10 ROOSEVELT AVENUE
WOODSIDE, NEW YORK 11377

February 25, 1976

HON. JOHN C. TRUESDALE
National Labor Relations Board
1717 Pennsylvania Avenue, N. W.
Washington, D. C. 20570

Re: Kimi Sales, Ltd. and Local 239, etal
Case # 29-CA-4370

Dear Mr. Truesdale:

We are submitting herewith eight copies of the Respondent's Exceptions to the above entitled matter, together with eight copies of Respondent's Brief.

Annexed thereto is an Affidavit of Service and copies of the receipts whereby service was effected upon Mr. Weinrich of your New York Office, as well as Local 239.

We respectfully ask that we be granted permission to give oral arguments upon this case at such time as same may be scheduled and to be convenient for the Board. We do feel that the factual circumstances are such that an opportunity to have open presentation and any questioning deemed appropriate by the Board would be most beneficial in getting to the true circumstances herein. In any event, we would sincerely appreciate the opportunity to so argue this case.

We again would like to express our sincere appreciation for the granting of the extention of time due to the fact that we did not receive the Minutes until late, late last Friday and could have not properly prepared the Exceptions and Brief without having same in our possession.

Would you kindly advise as to whether or not we may have such oral argument as respectfully requested.

Respectfully yours,

Frank R. McGlynn

FRANK R. McGLYNN

FRM/p
Enclosure

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KIMI SALES, LTD., Respondent	:	Case: 29-CA-4370
-and-	:	RESPONDENT KIMI SALES., LTD., EXCEPTIONS TO THE DECISION OF THE HON. MORTON D. FRIEDMAN Dated January 26, 1976
LOCAL 239, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Charging Party.	:	

Respondent, in exception to the decision in the above mentioned matter dated January 26, 1976, by their attorney FRANK R. McGLYNN, ESQ., of 60-10 Roosevelt Avenue, Woodside, New York, taking exception to the various parts of the decision of January 26, 1976 do state as follows:

The Respondent does definitely deny and take exception with the first paragraph on Page 1 of the decision, concerning, statement of the case wherein the charges alleged that the Respondent violated Section 8 (a) (3) and (1) of the act in any respect whatsoever. The specific denials of such violation shall be separately set forth as to each item hereinafter and shall also be challenged by the Brief as submitted on behalf of the Respondent. The Respondent also reaffirms the written denial submitted heretofore concerning these charges and reitterates and reaffirms same as if fully set forth herein.

For the purpose of clarity we will follow the same order of the Decision and other aspects of the papers dated January 26, 1976, and in turn follow the same headings and identification of

paragraphs. We now, therefore, deal specifically with the Findings of Fact as stated on said Decision, commencing at the top of Page 2.

I. As stated between lines 5 and 19, it was conceded that on both of said points, involving interstate commerce, the identity of the Respondent and the identity of the Union under Point II, the Labor organization has been properly constituted and a party, same were conceded and there is no dispute considering same.

Concerning point III the purported unfair labor practices as alleged, the Respondent does definitely, on the broad basis, and as hereinafter specifically enumerated, does deny and take exception with the fact that there were any unfair labor practices by the Respondent.

We shall now commence concerning Paragraph III (A), the facts as alleged on behalf of the Charging Party, and in particular, the individual involved, one James Thomas.

We respectfully would like to bring to the attention of the Board that on Line 36 of the Decision it refers to the fact that the said James Thomas allegedly resigned in January, 1974, when in fact the testimony on Page 14, Line 1, would indicate January of 1975. We, of course, realize that this is a typographical error and we, of course, are not taking any exception to such statement but merely would like to have the record kept in proper context.

In keeping with clarity we refer now to Page 3 of the Decision and the 1st Paragraph thereon, wherein it was indicated that James Thomas was hired again in March of 1975 and was then laid off on May 21, 1975. In keeping with the Order as followed by Judge Friedman on Page 16 between Lines 12 to 14, on direct examination, the said Mr. Thomas indicated that he was laid off for economic reasons as had been related to him by Mr. James Kiely, on behalf of

the Respondent. As will be indicated hereinafter, the Respondent freely submitted a chart indicating the employees and the continuation or laying-off of same, which would indicate that sometime in June that a subsequent "a" mechanic did resign after the rdease of Mr. Thomas and was not replaced by an "a" mechanic, but in turn a "b" mechanic was hired then laid off within one month in September of 1975 due to the fact that his performance was inadequate. The chart showing the various employees was Respondent's exhibit #3 as identified on Page 155, Line 15. In the Decision regarding Page 3 on Line 7 there is reference to an alleged conversaion between Mr. Thomas and various other employees. We take exception to that entire line of testimony and specifically, at the time of the trial, on Page 17, Line 16 we made objection and had an exception to this entire line of testimony which was obviously without the knowledge and in which the Respondent had no participation. As outlined on Page 18 of the record and commencing on Page 17 as hereinbefore set forth, through Line 14 of Page 18, the Judge indicated that Respondent had a continuing exception concerning the admission of the testimony of Thomas regarding the purported conversations with the employees concerning supposed Union questions. It is important to note that admittedly Mr. Thomas indicated that only employees were involved in the conversation and that there were no representatives there of Management and we, therefore, submit that in proper procedure the entire line of testimony regarding such conversations or the contents thereof specifically are inadmissable in evidence as a matter of Law. We respectfully direct in regard to this Exception of the admission of this entire line of testimony to Page 19, Lines 3 to 5 whereunder direct examination the said Mr. Thomas indicates specifically that there are no memebers of management present at the time of such purported conversations.

We take exception to the Paragraph commencing on Line 14 of Page 3 wherein it was indicated that two employees were allegedly laid off on May 16th as having anything to do with any purported Union activity. There is nothing in the record whatsoever to sustain this allegation but on the contrary even from Mr. Thomas' direct testimony it is indicated that the whole group, including the Service writer, "a", "b" and "c" mechanics were laid off and that he was retained temporarily to finish the work that was not completed. We respectfully would like to treat all of the material in said decision on Page 3 from Lines 14 to and including Line 35, to indicate that we except to all of said material as hereinbefore set forth pursuant to counsel's objection at the time of the trial, since all of the alleged material is relating to actions and/or conversations entirely without the knowledge of the Respondent or any of its representatives and is a self-serving and unilateral statement of Mr. Thomas, whose credibility we shall hereinafter question specifically. We, therefore, feel that our exception to that entire material, as set forth on said Lines, should be sustained since, obviously, there is no way in which the Respondent could have been effected by same, since it was without their knowledge.

Commencing on Page 23, Line 8, continuing to and including Page 33, Line 21, there is various material set forth by Mr. Thomas concerning purported meetings, conversations and actions with other employees and purported Union representatives, all of which is attested only to by Mr. Thomas and is self-serving and admittedly without the knowledge of the Respondent. It is respectfully submitted that all of said material should be stricken in that same has no proper basis of admissibility in evidence, even in an administrative proceeding where

it is admittedly beyond the knowledge of the Respondent. In this respect it is important to note, as is evident from the entire record, that none of the other fellow employees or none of the other persons laid-off at any time whatsoever made any complaint of any nature or kind regarding these circumstances. Commencing on Page 33, Line 5 and running through Page 34 prior to line 6, though as we pointed out previously and after proper objection and exception, we except to the entire line of testimony, even these words though we feel that they are strictly inadmissable as to the Respondent, the testimony of Mr. Thomas would indicate the names of five individuals commencing on Page 33, Line 5, who allegedly took place in these Union conversations. The very fact is that none of these other individuals were laid off at any time by the employer nor did any of them ever file any complaint of any nature or kind, again negating the unilateral assertions by Mr. Thomas which were admittedly without the knowledge of the Respondent.

Respectfully, the Judge on Page 34, commencing on Line 6 indicated that such testimony would not be binding upon the Respondent to indicate that the Respondent was cognizant of the Union activity. This again reverts back to the fact that additional employees of that same group were laid off on May 16th with Thomas admittedly in his own testimony, indicating that he was doing cleanup or completion work of materials that were left over, and as hereinafter will be shown and as part of the record, the service writer for such a type group named 'Rudy Fabon' was also laid off despite his friendship and closeness to the Respondents, individuals and officers. The Judge specifically vindicates that such testimony is not binding in any fashion since it

was obviously without the knowledge and could hardly have been the basis of the laying-off of other persons who have made no Complaint and who obviously do not relate the circumstances even remotely to purported Union activity, this apparently being due to the conjecture of Mr. Thomas individually.

We most certainly take exception to the statement as outlined on Page 3 commencing on Line 37 about a greeting from one Thomas Kiely to Mr. Thomas wherein any implication of any nature or kind whatsoever seems completely absurd. An examination of the cross examination of Mr. Thomas commencing in the record on Page 52, Line 8 and running through Page 53, Line 9, would indicate that the same Thomas Kiely was in the habit of greeting Mr. Thomas each and every work day in various ways, and to suddenly attempt to lend some ulterior design to saying hello completely seems without basis. We take exception and ask that that record of the Decision be stricken as being without any merit concerning the proceedings herein.

Again, concerning the question of merely saying hello we refer to the testimony of Mr. Thomas Kiely on Page 129, Line 12 to and including Page 130, Line 5, further indicates that this is a greeting and nothing else, and due to the fact that the Respondents deal substantially in foreign cars, or small cars, many of their employees being of various foreign originations, the method of saying hello or greeting is many times just jokingly done in good humor. The relatinship between this Respondent and the various employees is certainly illustrated by the fact that number one, there are no previous complaints made to the National Labor Relations Board, or other labor agency, despite the fact that they have been in business for many years,

and number two, the so-called testimony of Mr. Thomas is negated by the fact that none of the other employees, either those who were laid-off and who are not at any time identified with Union activity, or those that continued upon the premises, even though now identified by Mr. Thomas as having engaged in Union discussion, that none of same have at any time made any complaint whatsoever, nor have they in any manner testified in conjunction with or on behalf of the assertions of Mr. Thomas. This, if nothing else, we feel entirely negates unilateral, unfounded and unsubstantiated claims of Mr. Thomas, who as we will set forth later, has shown to be unreliable in his position as an employee, having resigned once for personal reasons and having accelerated his laying-off on a second occasion because he wanted to leave work to ship fish to Florida.

Regarding the footnote on the bottom of Page 3, we again actually take exception to the footnote, number one on the bottom of Page 3, due to the fact that there is no indication whatsoever by any evidence that should be acceptable that anyone else other than Mr. Thomas had anything to do with actual Union activity or even discussions. Our continuing objection as to these conversations had without the knowledge of the Respondent also pertains to this area where it is merely, again, the unilateral assertion by Mr. Thomas and his possible conjecture or surmise. We respectfully submit that this entire area of purported evidence is entirely without foundation whatsoever and that as such, same should be deleted as a result of our exception to same.

We shall be making a series of exceptions to the various assertions regarding the circumstances involving the laying-off of Mr. James Thomas and respectfully we will then assert questions sep-

erately regarding such exceptions concerning his cross examination, the direct and cross examination of Mr. James Kiely, Mr. Thomas Kiely and Mr. John L. Shea, since their testimony as will indicate collectively, rebuts the claims of Mr. James Thomas on behalf of the Respondent. We specifically take exception as to the summary or conclusion contained from Lines 16 through 34 of the decision regarding the circumstances of Mr. James Thomas being laid off. As indicated hereinafter, both of the Kielys who testified, James and Thomas, denied that there was any question of Union activity or even knowledge when the Decision was made to lay off a group of four people. This was further evidenced as we will set forth specifically through the testimony of Mr. Shea, a well respected and well known Certified Public Accountant, who testified under oath concerning the circumstances. We specifically refer to the cross examination of James Thomas which commenced on Page 54, Line 13, and ended on Page 58, Line 5, indicating that after the lay off on May 16, 1975, of Hector Jiminez, a Class 'B' mechanic, and Paul Cisco, a Class 'C' mechanic, that the said James Thomas was then involved in clean up or finishing work that was left over by these other members of such group. As is evident from the record, Mr. Pabon as indicated heretofore, is a close friend of the Kielys who was let go a few days later and as is evident, most certainly had nothing to do with any purported Union activity. Without being repetitious, the other alleged participants, alleged only by Thomas and no one else, some five in number as he named, remained as employees without question. I believe it would be fair to say that Thomas had admittedly completed his work, that had been assigned to him, and as he admits under cross examination, within the area heretofore specified, that at the same time he had finished his work

he indicated that he wanted to leave to ship fish to Florida so that it would appear that his departure or laying off came about at the same time as it would have either later that day or perhaps even the next day at the most, again, all of this as indicated in the testimony of Mr. Thomas Kiely having been determined prior to May 16, 1975. Even at the best interpretation of the testimony of Mr. Thomas on his behalf, certainly no question of Union activity could have been obvious or apparent to the Respondent prior to May 16, 1975 when these decisions had clearly been made. To accept the fact that Union activity, which was only allegedly and by no means admittedly, set forth on May 21, 1975 in the very first instance could it be said that decisions mady prior to May 16, 1975 were effected thereby. We respectfully submit that even the assertion that such Union activity had anything to do with his dismissal on May 21st was emphatically denied by both Mr. James Kiely and Mr. Thomas Kiely, and is further negated by the fact that no other employees were laid off even though supposedly they had to do with Union activity and the only employees were in that over all group concerning the service writer and the "a", "b" and "c" mechanics. The fact that John Kiely was not present is of no material substance since these decisions had already been made and two of the three brothers were present to testify. The one brother had to remain to run the business for the day which entails three different locations within an approximate two block area, including two other buildings, one being the showroom and sales area and the other being a body shop type facility. There is no possible way that Respondent could anticipate that Mr. James Thomas was going to allege to a certain conversation with one John Kiely, who he could see was not present, when his testimony was taken, since, as per the conversation or testimony of James

Kiely and Thomas Kiely, they denied knowledge of any such conversation and further denied that since they had such lack of knowledge that the question of Union activity could not be attributed to the lay off.

Regarding the above exceptions we respectfully refer to the direct testimony of Mr. James Kiely between Page 97, Line 4 and Page 98, Line 25 wherein it is indicated that they had contemplated keeping James Thomas on the payroll to the end of the day of May 21st, but on being advised by Mr. John Kiely that Mr. Thomas, who admitted so himself, wanted to take the rest of the day off, it was then decided to give him is check and terminate his position as of said half-day, and as separately indicated heretofore, same being part of a decision made regarding four employees prior to May 16, 1975, his direct testimony then goes into the fact of having to lay off Mr. Rudy Pabon who was the service writer for the group of "a", "b", and "c" mechanics but who due to said financial circumstances, also had to be released.

The cross examination of Mr. James Kiely between Pages 114, Line 24 and 115, Line 4 indicates that there is no conversation with him concerning any purported Union activity or was there any knowledge by him, again, specifically denying the allegations of Mr. Thomas which are entirely unsupported by any other evidence other than his own surmise and conjecture. In addition, Mr. Kiely emphatically states that their first knowledge of so-called Union activity was after receiving notice from your Board concerning the Comdaint of the Charging Party herein. We, therefore, take exception to the footnotes as to any indication that the testimony of knowledge of Union activity was not refuted as indicated it was refuted in the testimony of James Kiely and as will be hereinafter set forth, it was negated in the

testimony of Thomas Kiely who is the managerial officer regarding all the financial activities. Such allegations are further negated by all of the facts, including the testimony of Mr. Shea as we will specifically set forth and is negated by the failure of the charging party to adduce acceptable evidence to establish the necessary facts and is negated by the very fact that none of the other employees participated with Mr. Thomas in the proceedings herein.

Mr. James Kiely indicated on Page 115, Line 5 that the first indication to him would be the fact they received a notice from your Board indicating the Complaint herein by Mr. James Thomas. This clearly negates the assertion by Thomas of any purported conversation with John Kiely regarding James Kiely and his asserted knowledge of Union activity as further negated by all the circumstances heretofore set forth. Specifically the said Thomas Kiely testified, as shown on Page 131, Line 8 through Line 12 that he had no knowledge of any so-called Union activity and that same had nothing to do with the release of Mr. James Thomas. In the testimony of Mr. Shea it is clearly indicated that well before May 16, 1975 he had verbally and then in writing advised as to the losses in the Service Department, as clearly outlined in his testimony on Page 75, Line 23 of his direct testimony, and continuing through Page 81, Line 15, clearly indicating that the situation herein was brought about solely by economic reasons and by decisions rendered well before May 21, 1975, when there is the first unsupported claim of a question of Union activity. It is further evident that the said Mr. Thomas was the last class "a" mechanic that had been hired and as outlined in the testimony of Mr. James Kiely, had left some short time before for his own personal reasons before being rehired. James Kiely in his cross examination, in response to

a question indicated that the lay off of Mr. Thomas was due only to economic reasons and this was further admitted in the testimony of Mr Thomas, we refer to Mr. Kiely on Page 101, Line 1 to Line 8, as having been previously admitted by Mr. James Thomas.

It is in dicated in the testimony of Mr. Thomas Kiely that he had had conversations with Mr. Shea regarding the losses that had occured during May 1975 and that subsequently between about May 12th and May 14th conferences were had between the three Kiely brothers wherein it was decided that a section of the Service Department would be eliminated and to lessen the amount of warranty work which entailed a necessary loss. It was at that time, prior to May 16th when the first two employees were let go that such decision was made and clearly without the knowledge of any purported Union activity. Two other employees as outlined heretofore were let go before Mr. Thomas and Mr. Pabon was let go several days after due to these economic problems and factors. Such testimony of Mr. Thomas Kiely is outlined on Page 143, Line 20 to and including Page 151, Line 6. Concerning the decision running from Line 12 to and including Line 18, we take exception to the conclusion regarding the fact that there was some import to the situation whereby Mr. Thomas was sent to school. This is done periodically with both Fiat and Datsun, that are handled b y the Respondent and it is just a question of rotating whichever mechanic might be available who picks up various service pamphlets and oral instruction to be relayed back to the Respondent, its service writers, and mechanics. This is merely a mechanical factor which took place prior to the conferences with Mr. Shea and the decision that the cutback had to be made to survive economically. Any conclusion regarding this would be poorly taken since any number of mechanics have attended these

various courses over a period of a good number of years and has nothing whatsoever to do with the instant case.

We take further specific exception with the Paragraph of the decision on Page 5 commencing with Line 20 through 24 in that we have taken particular dispute heretofore concerning the itemized alleged facts and reitterate them again. We specifically deny, as fully outlined heretofore again by reference to particular testimony and circumstances, the contention that there was either knowledge or unlawful motivation and deny that the circumstances constitute the basis for a finding of discriminatory discharge of Mr. Thomas, again as fully outlined heretofore. We respectfully reiterate as hereinbefore set forth that the basic claim of Mr. Thomas is completely and utterly without foundation and without any evidence of any nature or kind which should be acceptable before this Board, we must again respectfully refer to the fact that Mr. Thomas made reference to conversations alleged to be had with other employees and with the representative of the Charging Party and admitted repeatedly that same were beyond the knowledge or participation of the Respondent. This by itself should result in all of such testimony being stricken and further this position was sustained by the testimony of Mr. Shea and the officials of the Respondent herein. We, therefore, must respectfully take exception to such paragraph and the finding referred to therein.

V. THE RESPONDENT'S DEFENSE

Concerning Page 6 regarding the Respondent's Defense, we take exception with remark, commencing on Line 14, "with the possible exception of some doubt as to whether Shea actually told Thomas Kiely to reduce the work force in the service department". We respectfully refer to the Decision and to Page 5, Line 44 wherein it is stated,

"Shea advised Thomas Kiely on that date to curtain the service department operations because the service department was spending too much time on warranty work, which should be spaced out to help reduce losses." Apparently there is a conclusion that such advice was made and then for some unspecified reason there is speculation as to whether or not it was made. We feel that it is thoroughly clear from the overall content that the economic reasons were fully established and that was the sole and only reason for the dismissal of the four employees as heretofore set forth.

We respectfully, while not taking any exception, refer to the Paragraph starting on Page 6, Line 45, wherein James Kiely indicated other specific reasons regarding the lay off of Mr. James Thomas. On Line 46 it is indicated that Mr. Thomas said that he was undecided what he was going to do in the future, keeping in mind that he had worked for them before and had resigned. This left him with relative uncertainty as stated in the decision as to the length of time that Mr. Thomas would stay and admittedly he was only recently hired and was the junior of all three class "a" mechanics, this substantiating the position of the Respondent.

The decision on top of Page 7 further reitterates the fact that it was necessary to lay off Mr. Rudy Pabon despite the fact of the close friendship, but also indicating a similar reason concerning him as of Mr. Thomas, that Mr. Pabon had indicated that he would leave shortly to go into his own business. This by itself substantiates part of the reasoning behind the choice of Mr. Thomas to be laid off.

On Page 7, Line 11 it is indicated that no class "a" mechanics were hired from the time that James Thomas was laid off, again

substantiating our position. On the same Page 7 on Line 21 it is indicated that despite the fact that another class "a" mechanic, Ferman Pacheco quit of his own volition, still he was not replaced, this again substantiating the fact that the sole reason for the lay off herein was the economic conditions as fully attested to and established.

We specifically take exception concerning the Decision on Page 7, commencing on Line 49, concerning the finding or conclusion as set forth through Line 11 on Page 8, that the Respondent did in fact have knowledge of the purported Union activity. All of the facts set forth herein would indicate that the laying off of Mr. Thomas had been scheduled the week before and would have been effective at the close of business on May 21, 1975 had he not demanded to take a half day off in order that he could ship fish to Florida. As indicated earlier, there is no true basis in evidence for having accepted over objection and with exception the testimony of Mr. Thomas concerning the purported conversations had without the knowledge or participation of the Respondent. The scheme or plan of lay offs had already commenced on May 16, had included Mr. Thomas clearly before May 21st, and continued to Mr. Pabon thereafter. The sole and only reason was the economic reasons as recited and there is no justification to impute any knowledge herein. We further take issue concerning the claim of knowledge on the supposed basis that same was a small facility when, in fact, such claim of knowledge was specifically refuted by the facts and testimony.

We again take exception to the paragraph commencing on Page 8 of the decision, Line 28. The first portion of the paragraph regarding the Fiat class was already discussed and we shall not be repetitious. Separately, we make reference to the finding whereby it denies the fact that James Kiely was informed by Mr. Thomas that he did not know what he

was going to do in the future, and the necessary implication that would have drawn therefrom that any hiring would be possibly temporary in nature. This implication is refuted by the very fact that the same Mr. Thomas had been hired and left before for personal reasons as outlined in Mr. Kiely's testimony. It is further refuted by the fact that Mr. Kiely further testified that he had to lay off his friend Mr. Rudy Pabon and that in choosing him, one of the factors was that Mr. Pabon had indicated that he would be leaving probably in the near future for his own business. It must be remembered that at the time Mr. Kely gave such testimony it could not even be remotely thought that this particular question would be an issue herein and that his similar reasoning applied both to Mr. Thomas and Mr. Pabon only serves to illustrate the fact that Mr. James Kiely was telling the truth and we must, therefore, take issue with such conclusion.

We specifically take exception to the Paragraph commencing on Page 8, Line 43, on the grounds that all credible testimony indicates that the selection of Mr. Thomas had been decided prior to May 16, 1975 when the first two employees were let go. It could hardly be said that these two employees that were let go were set up in a design so as to meet this question in this proceeding in the future but clearly illustrates the truth of the stand of the Respondent that this was set in motion prior to May 16th and was for economic reasons alone. The fact that it again led on to Mr. Pabon after Mr. Thomas further illustrates the position of the Respondent, it being clearly shown that Mr. Pabon was a friend and was part of management. We, therefore, object to such Paragraph and as it further continues to Line 3 on Page 9.

Concerning Page 9, we take exception to the portion of said Paragraph which commences on Line 11 and terminates on Line 18, regarding

the fact that the said James Thomas had not been rehired. In the first instance it was Respondent's sincere belief that there is no requisite to hire James Thomas again due to the fact that as fully noted heretofore the laying off of Mr. Thomas was precipitated by economic conditions and not any purported Union activity. Even assuming for the moment that there would be any reason to indicate that there is an obligation of any nature or kind to rehire Mr. Thomas the record makes it clear that even though an additional class "a" mechanic resigned subsequently, even he was not replaced, aside from Mr. Thomas due to the economic situation. One class 'B' mechanic was hired for approximately one month and then let go. We respectfully submit that that portion of said paragraph should be disregarded because it is not based upon the facts as they are herein and, therefore, are not properly entitled to any consideration herein.

Again, we take exception concerning Page 9, Line 25 with the words commencing "I find and conclude". We specifically deny that we in any way selected James Thomas for lay off in a discriminatory manner and take exception with and deny the fact that we in any way violated Section 8 (a), (3) and (1) of the Act. We believe that all of the credible facts herein point emphatically to the fact that the said Mr. Thomas was only one of a group of four employees that had to be let go for solely economic reasons. His departure by a half day earlier than originally anticipated, as of the close of business on May 21st, 1975, was only hastened to midday by reason of the admitted fact that he wanted to leave the employment for personal reasons on that particular day in midday.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE.

Concerning the allegations of the Paragraph commencing on

Page 9 at Line 34, we except to the statement that the activities of the Respondent tend to lead to Labor disputes burdening and obstructing commerce and the free flow of commerce. We specifically deny that any actions of the Respondent either designed or by chance were designed to accomplish such claim, and in no way did it lead to any labor dispute with all of the other employees allegedly involve the remaining with the employer. We further in no way interfered with commerce in any manner whatsoever as should be evident from the record herein.

V. THE REMEDY

We further take exception to Paragaph commencing on Line 42 of Page 9 excepting thereto and denying any unfair labor practices of any nature or kind whatsoever as fully outlined heretofore. We deny the existance of any unfair labor practices and therefore, respectfully suggest that we could hardly agree to cease and desist therefrom and, further, object to any claimed affirmative action to be required on behalf of the Respondent, since we reitterate that we have in no way violated the act.

We specifically take exception to the Paragraph commencing on Line 47 of Page 9 and which continues and ends on Line 8, Page 10. We reitterate all of the exceptions and reasons heretofore set forth and deny that we unlawfully selected James Thomas for lay off, for the reason that he was engaged in Union activities, nor did we at any time refuse to recall him by reason of any purported Union activities. We, of course, in asking that the decision herein be reversed in its entirety also state that due to the fact that we did not dismiss him for Union activities, but only for economic reasons, and for the reason that he indicated that he may not stay for any length of time that we should therefore, not now be obligated to rehire or recall Mr. Thomas. We,

therefore, also take exception to any claim for other rights or payments to which Mr. Thomas would be allegedly entitled.

CONCLUSIONS OF LAW

Concerning Paragraph #3 of said portion of the Decision, commencing on Page 10, Line 22, we take exception to the entire Paragraph and deny that there was any discrimination in the laying off and refusing to reinstate James Thomas, and deny that any actions were taken because of Union activities, and specifically deny any violations of the act under Sections 8 (a), (3) and (1) and 2 (6) and (7) of the Act.

Concerning Paragraph #4, which commences on Line 27 of Page 10, we take exception to the entire Paragraph and specifically deny having committed unfair labor practices and that any of our actions are unfair labor practices affecting commerce within the meaning of the Act.

ORDER

Concerning Paragraph 1 (a) on Page 11, commencing on Line 3, and ending on Line 9, we take exception to the entire Paragraph in that as indicated heretofore there is no foundation for same since we did not violate the Act and we again, specifically deny violation of such Act, and therefore, of course feel that such Order is unwarranted. We, of course, have not in the past and do not intend in the future to commit any acts that would in any way violate the provisions of said Paragraph. Concerning Paragraph 1 (b) on Page 11, commencing on Line 9 and continuing to Line 18, we take exception to the entire Paragraph. We specifically deny having at any time committed any acts that would violate the provisions of such Paragraph, and do not intend to commit any acts that would violate such paragrph in the future, but again in view of the legal and factual exceptions and statements heretofore set

forth we object to this paragraph on the grounds that such Order is not warranted due to the fact that there is no violation committed by the Respondent.

Concerning the provisions of Paragraph 2 (a), we again take exception to the entire Paragraph in that the said James Thomas was laid off solely for economic provisions and have nothing whatsoever to do with any purported Union activity and he is, therefore, not entitled to be offered his former position by the Respondent. We, therefore, take exception to that entire paragraph commencing on Line 23 and ending at Page 11 on Line 28 in its entirety.

Concerning paragraph 2 (b) on said Page 11, commencing on Line 30 we again take exception to the entire Paragraph on the grounds that same is related to the restoration of employment to Mr. Thomas, which employment we deny his being entitled to for all the reasons as heretofore stated and the fact that he was released solely on economic reasons with nothing to do with purported Union activity.

Regarding Paragraph 2 (c), commencing on Line 35, Page 11 and terminating on Line 3 of Page 12, we again take exception to the entire paragraph in that we deny any violation of the Act as heretofore fully set forth, and therefore the substance of such paragraph is not applicable to the Respondent, having released the employee for the lawful and legal reasons as heretofore set forth and in no way having released the said Mr. Thomas for purported Union activity.

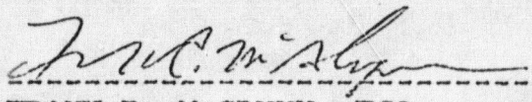
Concerning Paragraph 2 (b), commencing on Line 5, of Page 12, and terminating on Line 8 of Page 12, we respectfully take exception to same on the grounds that we are appealing herein and taking exception to the entire proposed action against the Respondent on the grounds as heretofore stated in that there was no dismissal for Union activity and

that Mr. Thomas was laid off only because of economic reasons and the further fact that he indicated that his tenure or length of stay would be questionable. He, having been part of a group of four that were laid off at about the same time.

WHEREFORE, it is respectfully requested that all of our exceptions be granted and that the Decision and all portions thereof be reversed and that a determination be made that the Respondent did act properly and with in all applicable provisions of the Act, and to set aside the said Decision of January 26, 1976 as rendered by the Hon. Morton D. Friedman be vacated and reversed in all respects.

Dated: Woodside, New York
February 25, 1976

Respectfully submitted,



FRANK R. McGLYNN, ESQ.
Attorney for Respondent KIMI SALES, LTD.
Office and P. O. Address
60-10 Roosevelt Avenue
Woodside, Queens, NY 11377
212 / 446-1313

STATE OF NEW YORK)
COUNTY OF QUEENS) SS.:

THOMAS KIELY, being duly sworn, deposes and says that Deponent is the Secretary of KIMI SALES, LTD., the corporation named in the within action; that Deponent has read the foregoing Exceptions to Decision and knows the contents thereof; and that the same is true to Deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. This Verification is made by Deponent because KIMI SALES, LTD. is a Ne w York corporation, Deponent is an officer thereof, to-wit, its Secretary. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are that he is personally familiar with the facts and circumstances throughout and

Upon hearing this, Mr. Thomas took it upon himself

personally familiar with all corporate records and books.

THOMAS KIELY, Secretary

Sworn to before me this
25th day of February, 1976

FRANK [illegible]
STATE [illegible] New York
No. 41-2417700 - Qual. in Queens Co.
Commission Expires March 30, 1977

VENUE
RK 11377

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

Postmark of Delivering Office

KIMI

SENDER INSTRUCTIONS

Print in the space below your name, address, including ZIP Code.
- If special services are desired, check block(s) on other side.
- Moisten gummed ends and attach to back of article.

RETURN TO

FRNNK R. McGLYNN, ESQ.
60-10 Roosevelt Avenue
Woodside, Queens, NY 11377

PS Form 3811 Nov. 1970 *55-14-61771-1

BEST COPY AVAILABLE

HAROLD R.
16 Court Street
Brooklyn, New York

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

No. 960749

SENT TO
HAROLD R. WEINRICH, ESQ.

STREET AND NO.
16 Court Street

P.O., STATE AND ZIP CODE
Brooklyn, New York

POSTMARK OR DATE

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered with delivery to addressee only ..... 15¢
2. Shows to whom, date and where delivered with delivery to addressee only ..... 25¢

DELIVER TO ADDRESSEE ONLY ..... 85¢

SPECIAL DELIVERY (extra fee required) ..... 50¢

PS Form Nov. 1971 3800

NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL

(See other side)

* GPO: 1970 O-397-428

CERTIFIED MAIL

No. 960749

FRANK R. McGLYNN
ATTORNEY AT LAW
60-10 ROOSEVELT AVENUE
WOODSIDE, NEW YORK 11377

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)
(Additional charges required for these services)

☒ Show to whom, date and address where delivered

☐ Deliver ONLY to addressee

RECEIPT LOCAL 239 TEAMSTERS UNION

Received the numbered article described below

REGISTERED NO.

CERTIFIED NO. 960748

INSURED NO.

DATE DELIVERED

1. SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

2. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

3. SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

LOCAL 239

INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA

252-17 Northern Blvd.

Little Neck, NY

No. 960748

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO
LOCAL 239 Teamsters Union

STREET AND NO.
252-17 Northern Blvd.

P.O., STATE AND ZIP CODE
Little Neck, NY

POSTMARK OR DATE

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered ..... 15¢
With delivery to addressee only ..... 65¢
2. Shows to whom, date and where delivered .. 35¢
With delivery to addressee only ..... 85¢

DELIVER TO ADDRESSEE ONLY ..... 50¢

SPECIAL DELIVERY (extra fee required) .....

PS Form Nov. 1971 3800

NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL

(See other side)

* GPO: 1970 O-387-488

No. 960748

STATE OF NEW YORK)
COUNTY OF QUEENS) SS.:

BRADLEY M. McGLYNN, being duly sworn, deposes and says:

That Deponent is over the age of 18 years and is not a party to this action, and resides at Woodside, New York.

That on the ~~25th~~ 25th day of February, 1976 the Deponent served a copy of the within RESPONDENT's EXCEPTIONS TO DECISION DATED January 26, 1976 and Respondents Brief upon Local 239, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America at 252-17 Northern Blvd., Little Neck, NY and Harold R. Weinrich, Esq. at 16 Court Street, Brooklyn, New York by ~~Registered~~ Certified Mail, Return Receipt Requested, attorney for Charging Party in the within action, at the address designed by said attorneys by enclosing same in a postpaid properly addressed wrapper, and depositing same in a post office box which is an offical depository under the care and exclusive custody of and regularly maintained by the U. S. Post Office at 61st Street & Roosevelt Ave., Woodside, NY 11377. We annex hereto copies of the receipt from the Post Office in each instance indicating that said papers were duly mailed by ~~Registered~~ Certified Mail, Return Receipt Requested.

Bradley M. McGlynn
BRADLEY M. McGLYNN

Sworn to before me this
25 day of February, 1976

JOHN R. McGLYNN
NOTARY PUBLIC, State of New York
No. 41-2[illegible]7600 - Qual. in Queens Co.
Commission [illegible]s March 30, 1977

D--1070
Woodside, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

KIMI SALES, LTD.

and

Case 29--CA--4370

LOCAL 239, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

DECISION AND ORDER

On January 26, 1976, Administrative Law Judge Morton D. Friedman issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions, a supporting brief, and a request for oral argument.[1/]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[2/] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

1/ The Respondent's request for oral argument is hereby denied, since the record, including the Respondent's brief, adequately presents the issues and position of the parties.

2/ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Kimi Sales, Ltd., Woodside, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. APR 30 1976

Betty Southard Murphy, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Note

" referred to & incorporated herein as the full administrative judge's decision dated Jan 26, 1976 "

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

National Labor Relations Board

DOCKET NO. 29-CA-4370

IN THE MATTER OF:

KIMI SALES, LTD.

PLACE: Brooklyn, New York

DATE: December 4, 1976

PAGES: 1 - 195

C. S. A. REPORTING CORPORATION
Official Reporters
300 Seventh Street, S.W. Washington, D. C. 20024
393-2320

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-Ninth Region

- x

In the Matter of: :

KIMI SALES, LTD. :

-and- : Case No. 29-CA-4370

LOCAL 239, IBT, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA :

- x

16 Court Street
Brooklyn, New York
Thurs., December 4, 1975

The above-entitled matter came on for hearing, pursuant to notice, at 10:25 a.m.

BEFORE:

Honorable MORTON D. FRIEDMAN,
Administrative Law Judge

APPEARANCES:

HAROLD R. WEINRICH, Esq.	Brooklyn, New York, appearing on behalf of Counsel for the General Counsel.
FRANK R. McGLYNN, Esq.	60-10 Roosevelt Avenue, Woodside, New York 11377, appearing on behalf of the Employer.
GERALD CORALLO, Business Representative and Trustee	252-17 Northern Boulevard, Little Neck, New York, appearing on behalf of Local 239.

- - -

INDEX

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
James Thomas	13	44	58	59
Thomas Kiely	61	66		
John L. Shea	72	81	90	
James Kiely	94	102	119	122
Thomas Kiely	123	135		
James Kiely (recalled)		161	162	
James Thomas (recalled)	164	168		
James Kiely (recalled)	171			

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
General Counsel's:		
1		5
2	32	32
Respondent's:		
1	77	81
2	77	173
3	155	173

P R O C E E D I N G S

JUDGE FRIEDMAN: All right, we'll proceed and open the hearing.

All right, gentlemen, on the record.

This is a proceeding involving Kimi Sales, Ltd., and Local 239, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case No. 29-CA-4370.

The name of the Administrative Law Judge is Morton, M-o-r-t-o-n, middle initial "D", Friedman, F-r-i-e-d-m-a-n.

Will counsel please note their appearances for the record?

MR. WEINRICH: Harold R. Weinrich, counsel for the General Counsel, 16 Court Street, Brooklyn, New York.

JUDGE FRIEDMAN: Is Charging Party represented?

MR. CORALLO: Gerald Corallo, Local 239, Teamsters.

JUDGE FRIEDMAN: What is your title, sir?

MR. CORALLO: Business representative.

JUDGE FRIEDMAN: And your address?

MR. CORALLO: 252-17 Northern Boulevard, Little Neck.

JUDGE FRIEDMAN: Respondent?

MR. McGLYNN: Frank R. McGlynn, 60-10 Roosevelt Avenue, Woodside, New York 11377, for the Respondent.

JUDGE FRIEDMAN: All right.

Gentlemen, before we proceed, I would just like to

express a few words of caution.

Everything to be said in this hearing room is to be said on the record unless you specifically request to go off the record. Then I will permit a motion to go off the record.

All written evidence of any sort, documentary evidence, must be submitted in duplicate. And, if you do not have a duplicate today, and matter is submitted in after, you must make a motion to make duplicates. Duplicates must be submitted in three days, no longer.

I would like to have reasons supporting any motions or objections being made so I will know what to rule on.

With that, I think we can proceed.

Are there any questions, Mr. McGlynn:

MR. McGLYNN: No, sir.

I spoke with Mr. Weinrich about the possibility of taking a witness out of turn. We have an accountant here who had other commitments.

JUDGE FRIEDMAN: You mean to start the case off with him?

Did you have any objection to it, Mr. Weinrich?

MR. WEINRICH: I have no objection.

JUDGE FRIEDMAN: I have no objection to it if counsel for General Counsel has none. I certainly will permit it.

MR. WEINRICH: I have no objection.

JUDGE FRIEDMAN: Are there any opening statements before we put him on?

MR. WEINRICH: I would like to make a brief opening statement, and I would like to move my forma. papers.

JUDGE FRIEDMAN: All right, sure.

MR. WEINRICH: Your Honor, at this time General Counsel offers into evidence as General Counsel's Exhibit No. 1 the formal documents in this proceeding.

The exhibit has been marked as General Counsel's Exhibit No. 1(a) through 1(l) inclusive, 1(l) being an index and description of the formal documents.

I have handed a copy to Mr. McGlynn. And these are all documents that he has received, and I don't believe he has any objection to their receipt in evidence.

MR. McGLYNN: No objection.

JUDGE FRIEDMAN: All right.

General Counsel's No. 1 received in evidence.

(Document heretofore marked General Counsel's Exhibit No. 1 received in evidence.)

MR. McGLYNN: Can I reserve on him as far as --

JUDGE FRIEDMAN: I'm sorry. I didn't hear you.

MR. McGLYNN: I am asking if I can reserve with the accountant for a while. I would like the Petitioner's case to be put in first if I can.

JUDGE FRIEDMAN: Sure.

MR. WEINRICH: Certainly.

JUDGE FRIEDMAN: All right.

Then, Mr. Weinrich, you can proceed.

MR. WEINRICH: Your Honor, briefly, the complaint in this matter issued by the Regional Director alleges a -- or, alleges violations of Section 8(a)(1) and (3) of the Act.

As can be seen by the pleadings, the only violation alleged is the layoff of one employee, Mr. Thomas. There is no independent violations of Section 8(a)(1) alleged in the complaint.

Kimi Sales, Ltd., is a car dealer, and Mr. Thomas was a mechanic employed in the service department of the dealership. He had first begun working for the Respondent in about June of 1974, at which time he was a service advisor or service writer.

He subsequently resigned for personal reasons, but made application to be rehired in March of 1975, and at that time was rehired as a mechanic.

He worked for the Respondent until May 21, 1975, at which time he was told he was being laid off.

Prior to May 21, beginning on or about May 12, Mr. Thomas became actively involved in a union organizational campaign at the time he was working for Respondent.

Respondent's employees were not organized, and no

BEST COPY AVAILABLE

collective bargaining representative had been chosen to represent them.

On or about Monday the 12th of May Mr. Thomas in the shop began discussing the possibility of union organization with his fellow employees. These conversations continued in the shop until his discharge, until his layoff.

However, on the 19th of May Mr. Thomas went across the street to another dealership and entered into a discussion with their shop steward.

Following that, he contacted Mr. Gerald Corallo by telephone, Mr. Corallo being a business representative for Local 239.

They entered into discussions which led to the planning of a meeting of all the employees. And on the same date, the 19th of May, Mr. Thomas executed an authorization card for Local 239.

Beginning on the 20th of May Mr. Thomas, as he will testify, the support for the Union in the shop began to dwindle. The reason for that will have to remain unexplained because we may draw inferences as to why, but we've no direct evidence to introduce as to why the support may have dwindled.

In any event, the meeting which had been scheduled for the 21st of May did not take place for several reasons: first, because the employees no longer were interested.

Upon hearing this, Mr. Thomas took it upon himself to speak with one of the principals of Kimi on the morning of the 21st of May, and in the shop he spoke to Jim Kiely.

During that conversation, Mr. Thomas told Mr. Kiely that the service shop employees had decided to seek union representation, however the employees were no longer seeking active union representation.

Mr. Thomas said that he had been the one who had been chosen to contact the Union, that he did so, that he had arranged a meeting but the meeting would no longer take place. And he told Mr. Keily that, if Mr. Keily was mad or angry or going to lay off or fire anybody, he should know who is responsible.

At that point Mr. Keily indicated that he wasn't going to lay off or fire anyone.

Following his conversation with Jim Keily, Mr. Thomas continued to work, doing his normal duties as a mechanic.

And, at about lunch time, after completing the job he was working on, he spoke to John Keily, another official of the company. At that time Mr. Thomas requested to leave work early if there was nothing further for him to do that day because he had some personal business to attend to.

At that point he was told by John Keily that he should wait around and he couldn't leave.

He asked, "Why? Do you have something you want me

to do?"

And Mr. Keily responded, "No. My brother Jim is angry about you over the Union thing, and he is going to lay you off."

And at that time Mr. Thomas' card was punched.

He had a brief discussion with Jim Keily where all he was told was that he was being laid off because of economic reasons.

Mr. Thomas will testify to the above events. He will also testify that he was an experienced mechanic, that he was one of the only mechanics capable of doing complete automotive work, that in the beginning of May prior to his layoff he was the mechanic that was selected to attend a special Fiat training session or training school where he was given special instruction which he was supposed to impart to the other employees.

In any event, Mr. Thomas was the person, or one of the persons, chosen for layoff.

Respondent has interposed an answer which is very complete and indicates that the layoff was part of an economic move, and that it was made -- not only Mr. Thomas was laid off but other employees were laid off.

The reason for the layoff of the other employees are not before us. However, evidence will also be introduced to show that, following the layoff of Mr. Thomas, there was

a recall of employees after several months, that Mr. Thomas was not offered his job, was not asked to return to work, and that in fact Mr. Thomas was classified as an A mechanic.

The Company, while looking for an A mechanic to fill the position, was unable to find one, and therefore hired B and C mechanics.

The question that remains open is that why, if the Company had an experienced mechanic, an A mechanic who was on layoff status for economic reasons for the -- and had not been recalled, why that mechanic wasn't recalled.

And the only answer, based upon the testimony of Mr. Thomas, is because that mechanic engaged in union activities. And, by failing to -- by laying off Mr. Thomas and failing to recall him, General Counsel submits that the evidence will show that this was done in violation of Section 8(a)(1) and (3) of the Act.

MR. McGLYNN: Finished?

JUDGE FRIEDMAN: Your statement.

MR. McGLYNN: Yes.

Very frankly, at the same time or prior thereto that Mr. Thomas was laid off, early that same week -- Now, he was an A mechanic, and they require a certain type of mechanic for certain type of work. I am very familiar with their operation. I represented them for 20 years.

In other words, a person who writes up work -- ap-

parently Mr. Thomas at one time did that work previously -- and then it's signed out depending on the capacity of the type of work.

Prior to Mr. Thomas being laid off, as he put it, on May 16 of 1975, two other employees were previously to him laid off, one being a B mechanic and one being a C mechanic.

He was laid off on May 21, 1975, some five days later, and, we contend, had absolutely nothing to do with any question of union activity.

The person in charge of personnel and finance is Mr. Thomas Keily, who actually operates basically out of another building. And the singular reason -- and subsequent thereto a Rudy Pabon, who was the service writer who would actually take a customer and write up his complaints or his problem and then assign it to a particular mechanic, whether it be A, B, or C, depending on the nature of the work, he was laid off on May 28, 1975.

Mr. Keily did this solely and strictly for financial reasons.

We will submit in evidence -- we have the accountant with us, Mr. Shea, which shows on the first quarter of 1975 in the repair shop -- the service department, as he puts it -- that there was a loss of $28,972, and that this loss -- whereas the other segments of the company, that

he breaks it down in areas -- whereas the other segments were in the black or close to it, this would gradually put the company totally out of business.

And, as just claimed by Mr. Thomas that he was the one initiating union activity, our position, Mr. Keily -- this Mr. Keily -- even assuming for the moment what he says is possibly true, that this Mr. Keily did it on the basis -- not he personally, but laid off two others first as a work product and as a segment of his operation had to be cut.

And we have the CPA here who is familiar with the books and worked on the books for a long time. And he will testify that it was his advice that they have to do something with the service department or have to go out of business. It's that simple.

JUDGE FRIEDMAN: All right, sir.

I think I know your positions pretty well. It would be a good idea -- have to prove or disprove, if you will proceed.

But, before we proceed, Mr. Weinrich, I want to tell all the parties that, if at any time during this proceeding for any reason you want to go off the record for purposes of discussing possible settlement, I will be available to assist you in any way I can.

All right, proceed, Mr. Weinrich.

MR. WEINRICH: Your Honor, General Counsel calls as its first witness Mr. James Thomas.

JUDGE FRIEDMAN: Mr. Thomas, please come up.

Whereupon,

JAMES THOMAS

was called as a witness by the General Counsel and, having been first duly sworn, testified as follows:

JUDGE FRIEDMAN: All right. Please be seated.

Give your full name and address to the reporter, sir.

THE WITNESS: James Thomas, 40-41 190th Street, Flushing, New York.

JUDGE FRIEDMAN: Any middle initial, Mr. Thomas?

THE WITNESS: No, I don't have any.

JUDGE FRIEDMAN: All right. Thank you, sir.

You may proceed, Mr. Weinrich.

DIRECT EXAMINATION

Q (By Mr. Weinrich) Mr. Thomas, have you ever been employed by the Respondent in this proceeding, Kimi Sales, Ltd.?

A Yes.

Q When did you first begin working for Kimi?

A About June of 1974, thereabouts.

Q In what capacity did you work for Kimi at that time?

A As a service advisor, service writer.

Q And for how long did you work for Kimi in that capacity?

A Until January of 1975.

Q Under what circumstances did your employment terminate at that time?

A Well, I had planned to personally go into another business of my own.

Q You resigned; is that correct?

A Yes.

Q Did there come a time when you reapplied for employment with Kimi?

A Yes, there was.

Q And when would that have been?

A In March of 1975.

Q And were you rehired at that time?

A Yes.

Q Who were you hired by?

A By Jim Keily.

Q And what was Jim Keily's position with the company?

A He was service manager, ran the service, service department and auto body shop department.

Q And in what capacity were you hired at that time?

A As an A mechanic.

Q As an A mechanic, what was your salary?

A $225 a week.

Q Did you receive any other benefits?

A No.

Q Would you describe for the Court the type of work you performed as an A mechanic?

A Yes.

Complete automotive work, including transmissions, motor work, electrical work and such.

Q At the time you were rehired by the company as an A mechanic, how many other employees were working in the service department?

A I would say roughly between ten to eleven mechanics.

Q Now, of these ten to eleven mechanics employed in the service department at that time, how many of those mechanics did the same type of work that you did? How many were A mechanics?

A About two that I would know of.

Q Who were they?

A They were a man -- first name of Vittorio, and another man by the name of Pacheco.

Q You said that there were ten or eleven other mechanics. How many other -- Were there any other B mechanics?

A Well, they would probably classify them a general automotive mechanics.

Q How many employees were there in that category?

A I would say at least five, five or six.

Q Could you name them?

A Victor Gussman, Roy, Nick, a Hector, there was a Paul,

and Chris. And offhand that is about it.

Q Could you tell us what the difference was, if any, between the type of work performed by the people you described as A mechanics and those -- and the type of work performed by the people you have just named and described as general mechanics?

A General mechanics would not do a complete motor work, or they would not do transmission work and a lot of electrical work.

Q When did you stop working for Kimi?

A May 21st.

Q And under what circumstances did you stop working?

A I was laid off for economical reasons as given to me by Jim Keily.

Q Now, during the period of time between the date that you were rehired and the date that you were told you were being laid off, that would be the period between March of 1975 and May 21, 1975, were any other employees hired in the service department?

A Not to my knowledge.

Q So, you would have been the last person hired; is that correct?

A That I recall, yes.

Q While employed how many hours did you work a week?

A Forty hours, plus some overtime.

Q What time did you normally start in the morning?

A Normal hours of starting were 8:30.

Q And what time did you normally finish in the evening?

A At 5:00.

Q And on what day of the week were you paid?

A We were paid on Friday.

Q If you know, when did the payroll week run from?

A Usually Thursday to Wednesday.

Q So, when you were paid on a Friday, you received your pay up to the previous Wednesday; is that correct?

A Yes.

Q Now, at that time you were rehired by Kimi as an A mechanic, were the company's employees represented by any labor organization?

A No.

Q Did there come a time when you and your fellow employees began to discuss the possibility of union organization?

MR. McGLYNN: Objection.

A Yes, there was.

JUDGE FRIEDMAN: What is the objection?

MR. McGLYNN: Objection on that we are now apparently getting into the field of conversation in which we have no proof that the Respondent has knowledge and we are not bound by such conversations or his interpretations thereof.

JUDGE FRIEDMAN: Overruled.

MR. McGLYNN: I have an exception, sir.

JUDGE FRIEDMAN: You have an automatic exception, sir.

MR. McGLYNN: Exception.

Q (By Mr. Weinrich) Did I get an answer to that question? Did such discussions take place?

A Yes, there were such.

Q When did these discussions begin?

A Started about May of -- May 12th of 1975.

MR. McGLYNN: Sir, may I have a continuing exception so I don't have to keep getting up?

JUDGE FRIEDMAN: The entire line of --

MR. McGLYNN: Not in the furtherance of participation of the Respondent.

Q You testified that discussions began on May 12, 1975. Did a discussion take place on that day?

A Yes. The men came up to me and asked me about the union.

Q Which men came up to you?

A Well, it was a young man named Paul, Victor Gussman, Kenny, Chris and Vittorio, and later on others.

Q Where did they come up to you? Where physically did this take place?

A Well, in the shop area.

Q And during what time of day?

A This is during the morning hour and then later on during coffee call and during the lunch break.

Q To your knowledge, was anyone else present during these discussions?

A No, not to my knowledge.

Q If you recall, will you tell us what was said during this discussion on the 12th of May?

A Yes.

The men had decided that I did not know if they were going to get a union in the shop, and if I --

MR. McGLYNN: Objection, sir.

He is summarizing. He is not giving the subject of the conversation.

JUDGE FRIEDMAN: Sustained.

MR. McGLYNN: With my continuing exception to the whole line.

JUDGE FRIEDMAN: Correct.

Q (By Mr. Weinrich) To the best of your recollection, Mr. Thomas, will you please tell us what was said during this first discussion by you and by the others present, if anything?

A Yes.

The men wanted to increase their benefits --

MR. McGLYNN: Same objection, sir.

JUDGE FRIEDMAN: Yes.

I would like to have the exact conversation if possible. I will sustain the objection.

Q Mr. Thomas, who spoke first? Who spoke to you first during this first discussion?

A Paul and Victor Gussman.

Q If you recall, will you tell us what Paul said to you, if anything?

A Paul had said to me that they were deciding to have the men in the shop sign up for a union, Local 239.

MR. McGLYNN: I again indicate he is summarizing. He is not giving the substance of the conversation. And I repeat my objection.

What did he say to Paul or to Victor or whomever it might be?

JUDGE FRIEDMAN: I think Paul told him that the men had decided -- Overruled.

Go ahead.

Q Did you respond in any way to Paul's statement?

A I said yes, I would like to go along and join the union with them.

Q If you recall, who spoke next?

A Victor Gussman was speaking.

Q And, if you recall, will you tell us what Victor Gussman said?

A He said that he would like to have a union in the

shop for medical benefits and increased earnings -- it cost him a lot of money out of his own pocket to take a wife and a child to the hospital where he could not afford it.

Q Did anybody respond to that statement?

A Several of the men in the shop said yes.

MR. McGLYNN: Objection, unless we identify who they are and exactly what they said.

JUDGE FRIEDMAN: Sustained.

Q Do you recall who responded to that?

A Yes. Vittorio responded to that, Chris responded to that, and a man by the name of Anderson responded to that, and others that we -- say, Kenny and Nick; just about the whole shop.

Q Do you recall if Paul said anything else during the conversation?

A He said he was trying to get a representative from Local 239 to represent us, and that we would sign up by that union.

Q Do you recall if you said anything else during the conversation?

A Not then, no.

Q Do you recall if anything else was said during the conversation?

A Not to my knowledge.

of the sustaining of the objection, of previous objection made.

Q Do you recall when the next specific discussion following the discussion on May 12 took place?

A Well, it was Monday the 19th that we discussed further union shop activities. And that is the day I went over to see Mr. Parker.

Q Let me ask you a question or two.

To your knowledge, did any of the employees present on the May 12th meeting contact Local 239?

A They tried to contact them, but they were laid off later on.

MR. McGLYNN: Objection, Your Honor.

JUDGE FRIEDMAN: Sustained.

Q Did there come a time when you contacted any representative of Local 239, Mr. Thomas?

A Yes, there was.

Q When did you first make contact with Local 239?

A Local 239.

Q Who did you speak to at that time?

A I spoke to first --

MR. McGLYNN: Excuse me.

Again I am objecting, Your Honor. These are incidents that, unless proven within the knowledge of the Respondent, have no real bearing here.

Now, if we're going to go into contents of discussions not had in the presence of Respondent, I think it highly improper.

JUDGE FRIEDMAN: On what basis? It's not hearsay.

MR. McGLYNN: It's not a question of hearsay. It has no binding effect on the Respondent. We had no participation in this.

Unless it's shown that we had knowledge of these discussions and/or participation, how can it be said to be binding on a conversation between he -- assuming it took place -- and Mr. Corallo, whomever it may have been?

I know this is more in the nature of an administrative proceeding, but, even so, conversations, discussions or plans or meetings had without our knowledge or participation have no credible bearing or evidentiary effect against us. And I don't think we should be bound by that in any manner whatsoever.

JUDGE FRIEDMAN: What do you say to that?

MR. WEINRICH: Well, Your Honor, it's my understanding that one of General Counsel's elements of proof in a hearing such as this is that a discriminatee in fact engaged in union activity --

JUDGE FRIEDMAN: Yes.

MR. WEINRICH: -- in or outside the presence of Respondent.

JUDGE FRIEDMAN: I think that perhaps what Mr. Weinrich is saying is that we accept evidence of union activity. Whether or not the General Counsel can prove knowledge on your part is something else.

MR. McGLYNN: I can understand a question, did he in fact contact Mr. Corallo or whoever it may have been from the union. That I can understand.

But, if we're going to go into substance of matters which would be highly prejudicial to a respondent, it's an entirely different field where we have no knowledge or participation.

I can see that he has to establish the fact that he did speak to a union. Going into the contents of that, of conversations not had in our presence, which we have no knowledge, would be highly prejudicial.

It's being made part of a record, being laid out before Your Honor.

JUDGE FRIEDMAN: Would it satisfy you that I would say for the purpose of showing union activity, but certainly wouldn't be binding upon you as to what is the truth of the matter took place in that conversation? I think that is what you are driving at.

MR. McGLYNN: I don't feel that prejudicial matters should be brought in that we have no knowledge of.

JUDGE FRIEDMAN: I will take it for the purpose of

showing this man's union activity, period.

Q (By Mr. Weinrich) I believe you began to testify, Mr. Thomas, that on May 19, 1975, you contacted some representative of Local 239; is that correct?

A Yes.

Q Who did you first contact?

A I contacted Mr. Parker, who worked for Oldsmobile across the street, Paragon Oldsmobile.

Q And did Mr. Parker, to your knowledge, hold any position in Local 239?

A He was a shop steward.

Q Was Paragon a Local 239 shop?

A Yes.

Q Did you have a discussion with Mr. Parker?

A Yes, I did.

Q Where did this discussion take place?

A At Paragon Oldsmobile.

Q Who, if anyone, else was present during the discussion?

A Just one other man in the shop at Paragon Oldsmobile.

Q Will you tell us what you said to Mr. Parker, if anything, and what Mr. Parker said to you?

A I asked Mr. Parker that we were -- men in Kimi Sales had decided to activate a union in the shop, and we would like to get ahold of the representative of Local 239.

Q And what did Mr. Parker say, if anything?

A He gave me the telephone number of Local 239, Mr. Gerald Corallo.

Q Did you subsequently call Mr. Corallo?

A Yes, I did.

Q When?

A That lunch hour of that day, May 19.

Q And, if you recall, will you tell us what you said to Mr. Corallo and what Mr. Corallo said to you during that telephone conversation?

A Yes.

I spoke to Mr. Corallo saying that the men of Kimi Sales would like to become members of the union.

Mr. Corallo said that he would like to see me and set up a meeting and get the men together at Local 239. I would see Mr. Corallo that evening, Monday the 19th.

Q Following your telephone conversation with Mr. Corallo, did you return to work?

A Yes, I did.

Q Upon your return to work, did you have occasion to speak with any of your fellow employees concerning your contact with Local 239?

A Yes. They --

Q Well, did you or didn't you?

A Yes.

Q If you recall, will you tell us the names of the employees to whom you spoke?

A Victor Gussman --

MR. McGLYNN: Just one moment, please.

Again I am making an objection that these conversations -- The fact that he had a conversation, I believe, is admissible. However, the content of those conversations again can be highly prejudicial.

We had no part in them. We had no knowledge of them. And I do not feel they should be made part of this record.

The fact that he did have a conversation, I believe that should be as far as it goes.

JUDGE FRIEDMAN: Mr. Weinrich?

MR. WEINRICH: Well, Your Honor, I think that among other reasons for the admissibility of a conversation between employees concerning union activities other than the fact that union activities were engaged in is, in a situation like this where you have ten to eleven employees in a service shop, where the witness has testified to the conversations took place in the shop, that the fact that these conversations took place, and possibly what was said has some bearing upon the issue of the Employer's knowledge through the small-shop theory as expressed in Weise Plow.

JUDGE FRIEDMAN: Full title is Weise Plow Welding Corp. I don't know the exact citation.

MR. McGLYNN: Obviously we are not denying that he -- we are not saying we didn't have knowledge, or Mr. Keily, that he did have union activity. I think that is all that is necessary.

I do not -- By his own claimed statement, he informed one of the managerial employees of his interest in the union.

I might say that this is something that is not new. It has gone on many years, and we have had no problems with it as far as employees voicing or expressing interest in a union. That has never been the source of trouble as far as we've been concerned.

JUDGE FRIEDMAN: Well, that --

MR. McGLYNN: No, but I am saying I don't feel we should get into the substance of material which we have no knowledge of.

JUDGE FRIEDMAN: Overruled.

By the way, no --

Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: Back on the record.

Q (By Mr. Weinrich) Mr. Thomas, I believe I had asked you whether, upon your return to the shop after contacting Local 239, had you spoke to any other employees concerning your conversation with Mr. Corallo.

And, if you did, which employees did you speak with?

A I spoke to Victor Gussman, Chris, Kenny and Nick at the time.

Q Where did -- Was that a group conversation or individual conversation?

A Yes. These four men were talking. And then later on many joined us.

Q Where were the four men talking when you --

A -- In the shop area.

Q Was anyone else present, to your knowledge?

A No, not to my knowledge.

Q What, if anything, did you say to the men?

A They wanted to know if I got ahold of the union member. I said yes, and I gave them the specifics of time and date of the meeting. And I told them I would meet with Mr. Corallo that night and bring --

Q Did you meet with Mr. Corallo that night?

A Yes, I did.

Q Where did your meeting with Mr. Corallo take place?

A At Local 239.

Q At what time during the evening did it take place?

A Between 7:00 and 8:00, I believe, somewhere around there.

Q To your recollection -- Do you recall if anyone else was present?

A Just myself and Mr. Corallo.

Q Will you tell us what, if anything, you said to Mr. Corallo during that meeting, and what, if anything, he said to you?

MR. McGLYNN: I am going to make the same objection, Your Honor. I am not going to voice it again.

JUDGE FRIEDMAN: I am going to take it subject to a motion to strike. I want to see what this is all about.

Go ahead.

A I spoke with Mr. Corallo about where the union meeting could be held. And we decided the best place was at Local Union 239 hall, and that all the men would be able to come.

And at that time I know I signed an admittance card into the union myself.

Q At which time?

A When I spoke to Mr. Corallo on that night, on the 19th.

Q He gave you a card; is that correct?

A Yes.

Q Did he tell you anything about the card?

A Yes.

Q What did he say, if you remember?

A He explained that this is an agreement for the men in the shop. Each one would have to sign a card --

MR. WEINRICH: Mark this as General Counsel's Exhibit

No. 2 for identification, please.

(Document above referred to marked General Counsel's Exhibit No. 2 for identification.)

Q (By Mr. Weinrich) Mr. Thomas, I show you General Counsel's Exhibit No. 2 marked for the purposes of identification, and ask if you can identify that piece of paper.

A Yes. This is the card that I snged that evening with Mr. Corallo on the 19th.

MR. McGLYNN: I have the same objection, Your Honor, as having positively no bearing or no connection with the Respondent.

JUDGE FRIEDMAN: Overruled.

MR. WEINRICH: Your Honor, I ask that General Counsel's Exhibit 2 marked for identification be received in evidence.

JUDGE FRIEDMAN: Received.

(Document heretofore marked General Counsel's Exhibit No. 2 received in evidence.)

JUDGE FRIEDMAN: Did I understand you to say that yo9 don't have a duplicate of this card?

MR. WEINRICH: At this time, Your Honor.

JUDGE FRIEDMAN: Will you do that and supply a copy to the Respondent, please?

MR. WEINRICH: I certainly will.

Q (By Mr. Weinrich) Did you report to work on May 20,

1975?

A Yes, I did.

Q At -- And did you report to work on May 21, 1975?

A Yes, I did.

Q On the morning of May 21, 1975, do you recall if you had occasion to speak with any of your fellow employees about union organization at that time?

A Yes.

The employees spoke to me about the union activity.

Q Which employees spoke to you?

A Well, Victor Gussman, Chris, Kenny and Vittorio came to me first, and Roy.

Q Did they speak to you individually or in a group?

A More or less as a group, at least five persons.

Q If you recall, will you tell us what each of the men that you just identified said to you and what you said to them, if anything?

MR. McGLYNN: I have the same objection, I assume.

JUDGE FRIEDMAN: It's a continuing objection, continuing ruling, and continuing exception.

A Well, Victor Gussman said that someone had known about the union activities, that John Thomas, a parts department man, had told him that the Keilys had known about it, and that he wanted to pull out, everybody wanted to pull out of the union.

Q And what did you say, if anything?

A I said, if that is the way he felt and didn't want anybody to get hurt in the shop, they were afraid of losing their jobs --

MR. McGLYNN: This is --

JUDGE FRIEDMAN: I think that there is -- I will take the matter to show why Mr. Thomas did anything.

But, as far as the statement made to him about the parts man's knowledge that the employer had knowledge, I am not going to take that for any -- as a matter which is prejudicial to the trial. In other words, I will not take that as evidence of any activity against the Union on the part of Respondent, on Respondent's knowledge.

MR. McGLYNN: I thought that is what he said. The parts man is not part of my management.

JUDGE FRIEDMAN: I am not taking it for that purpose in any event; even if he was part of management, I would not take it for that purpose because it's not personal knowledge.

Go ahead.

Q (By Mr. Weinrich) Following your discussion with the employees you just named, did you have occasion on the morning of the 21st of May to speak with any representatives of Kimi's management?

A Yes, I did.

Q With whom did you first speak, if you had more than one conversation?

A I was working on an automobile, and a coffee truck pulled up to the door about 9:30. And Thomas Keily came up to me and explained, "Well, how long have you been in this country?" And that was about it.

Q That was his statement to you?

A Yes.

And then he walked away to the coffee truck.

Q Did you make any response to him?

A Well, I kind of looked up from the car I was working on and went back to work.

Q What kind of car were you working on that morning?

A It was a 1974 blue Datsun B210 sedan, two-door.

Q Do you recall if during that morning you had occasion to speak with any other representative of Kimi management?

A Yes. I spoke to Jim Keily.

Q At what time of day did your conversation with Jim Keily take place?

A Between 9:30 and 10:00 o'clock that morning at coffee call.

Q Where did the conversation take place?

A I was right by -- about 15 feet from the coffee truck in the shop.

Q Were any other representatives of management present at that time?

A No.

Q If you recall, what did you say to Jim Keily and what did he say to you, if anything?

A I explained to Jim Keily at the time that the men were going to be getting a union in the shop but they have decided against it, and they were afraid of losing their working periods as such, and that if he had anything against me for, I was the man that they had chosen to select a union and to get in contact with the union, and if he had anything against me like laying me off or mad or angry at me that I would like to know about it.

He said, "No, of course not, I'm not."

Q Was anything else said during that conversation?

A Well, just said that he was not angry with me, and he was not laying me off or anybody off.

Q How long did the conversation last?

A About ten or fifteen minutes.

Q Well, then, there must have been more said if it lasted --

A Victor Gussman and some of the men were in the shop at that time, but I don't recall the exact words, talking about working on an automobile or Victor had a problem and I was helping him out.

Q Concerning the union, that part of the conversation you just testified to, was anything else said concerning the union at that time?

A No, not that I recall.

Q Okay.

Following your conversation with Jim Keily, what did you do?

A I continued to go back to work on an automobile.

Q And at what time did you finish work on that automobile?

A I finished work on that automobile about, I would say, maybe between 10:00 and 10:30.

I was given another job soon after, was left over from last Friday, the previous Friday. The car was -- had to be completed.

Q And until what time did you work on that second car?

A Until 12:00, 12:30, around lunch time it was.

Q When you finished working on the second automobile about lunch time did you have occasion to speak with any other representatives of the company's management?

A Yes. I went to speak to John Keily.

Q If you know, what position did John Keily hold with the company?

A Well, he was as a working parts department and assisting Jim Keily in this service department.

Q Was he also an officer of the corporation?

A Yes, he was.

Q And where did your conversation with John Keily take place?

A In the service office near the parts department.

Q Was anyone else present?

A Yes. I believe there were three mechanics were present at the time of work. And Rudy the service writer and Jim Keily's wife Marian was sitting at the area.

Q How far away were all of those people from you?

A I would say from myself to Mr. McGlynn over there at the furthest distance.

Q Were they party to the conversation?

MR. McGLYNN: Indicating approximately 12 feet, Your Honor.

JUDGE FRIEDMAN: Yes.

Q Were they party to the conversation?

A No, they were not. They were just listening in. Some of the mechanics were listening in. They were closer by.

Q If you recall, will you tell us what you said to John Keily and what he said to you, if anything?

A Yes.

I asked John Keily if there was any more work; otherwise, I would like to be going home and shipping some fish,

tropical fish, to a show in Florida.

Q What did he say?

Well, did you say anything else?

A I said -- no, that is it.

He said, "No, at this time I have no other work for you." He said -- I said, "This has got nothing to do with union activity." I said, "I am going home. I want to ship some fish out of state."

He said, "No, right now," he said, "There is no other work." He said, "My brother Jim is awful mad on you anyway. He decided on laying you off. He is up at the office right now. You will have to wait around."

Q Do you recall if John Koily said anything else?

A Not at this time I recall, no.

Q Do you recall if he said why his brother Jim was awful mad at you?

A Was mad at me because --

JUDGE FRIEDMAN: Wait.

Did he say this? Did he actually say this, or are you just guessing?

THE WITNESS: No, that he spoke during the conversation right then -- it was a matter of maybe five minutes -- he said, "We're awful mad; my brother Jim is awful mad at you for your part in the union activities, in trying to bring a union in the shop. We don't want a union in the

shop and never had. It has been tried in the past, and we don't want it."

Q Did you say anything at that point, if you remember?

A I'm sorry?

Q Did you say anything else?

A I asked him if I had another job, and he said no.

Q What did you do then?

A I went back into the shop area and waited. And then they told me that --

Q Who told you?

A John Keily told me to come back in. He had -- he punched out the clock, of course, before and he handed me a check.

Jim Keily was there at the time.

Q When was your card punched off the clock?

A About 1:00 o'clock they punched me out of the clock, I believe it was.

Q Which point -- Was that during the conversation?

A When I and John Keily were having a conversation he punched the card when he had told me that I was being laid off.

Q Now, after your card was punched, you testified you went back into the shop.

A Yes, I did.

Q What did you do?

A I started to put my tools together.

Q Okay.

And how did you come to engage in a second conversation with John and Jim Keily?

A Jim Keily had came in and said, "Here, I have your check for you."

And I asked him what reason it was for my being laid off.

And he said, "Well, I am laying you off for economic conditions," and he gave me a smile, and that was it, and he handed me my check.

I asked him for a pink slip. And he said, "Well, you will have to go up to the office and get it."

Q Did you go up to the office?

A I went up to the office.

Q And were you given a pink slip in the office?

A Yes, I was.

Q At what time did you leave the company premises?

A I would say between 1:30 and 2:00 o'clock probably that day.

Q Now, since that day, the 21st of May, have you had any further conversations with any representatives of the company's management?

A No.

Q Have you been offered your job back?

A No, not there, no.

Q Now, during the period of time that you had worked for the company, from March of 1975 until May the 21st of 1975, were you advised by any representative of management that the company was undergoing economic difficulties?

A No, not then.

Q On the day in the week prior to your layoff had the shop been busy?

A Well, it had been very busy because we all had appointments ahead of time, and I was working overtime.

MR. WEINRICH: Can I just have a minute, Your Honor?

JUDGE FRIEDMAN: Yes.

MR. WEINRICH: I just have another question or two.

Q (By Mr. Weinrich) During the period of your employment from March of 1975 until May of 1975 did you receive any special training, Mr. Thomas?

A Yes, I did.

Q What type of special training did you receive?

A I was sent to Fiat training school for two days for special training in Fiat automobiles and a new advancing in the automobile, electronic ignition, electronic, rather, work and five-speed transmissions and differentials that were coming in.

Q Who selected you to go to this school, if you know?

A Well, Jim Keily selected me.

Q Did you have a conversation with him at that time?

A Yes. He did ask me if I would like to be able to go to school for him and pick up all the information I can up there and bring it back to the shop. He wants somebody that knows what is happening up there, and to bring it back into the shop so we're not going to have any trouble on new automobiles coming through.

Q How long did this training session last?

A For two complete days.

Q Did any other mechanics from the shop attend with you?

A No, not at that time, no.

Q When did you attend that training session?

A Early part of May, first week in May, I believe.

Q And following that what did you do with the information that you gathered at the training session?

A Well, I brought it back to Jim Keily, and he was very appreciative of it, and we had copies made of it because it was roughly 20 to 30 sheets of work.

JUDGE FRIEDMAN: Do you have any questions to ask?

MR. CORALLO: No. No.

JUDGE FRIEDMAN: All right.

THE REPORTER: Your Honor, may I have ten minutes' break before we go into cross-examination?

JUDGE FRIEDMAN: All right.

(Recess taken.)

BEST COPY AVAILABLE

JUDGE FRIEDMAN: All right, gentlemen, ready on the record.

You may cross-examine.

CROSS-EXAMINATION

Q (By Mr. McGlynn) Now, Mr. Thomas, you were laid off on May 21, 1975; is that correct?

A Yes, I was.

Q And that would be a Wednesday?

A Yes, it was.

Q And the Wednesday is the end of your normal payroll work week; is that correct?

A Yes, it was.

Q Now, you had worked for them previously, and you were rehired in March of 1975; is that correct?

A Yes, I was.

Q Now, you talked of going to school.

Now, I assume you had been there before as a service writer and such.

To your knowledge, do you recall other men going to school at various times, both to Fiat and Datsun?

A When I was a service writer, yes, service writer.

Q Now, just prior to your leaving, do you recall Mr. Jimenez and Mr. Sisto?

A Yes.

Q That would be Victor and Paul?

A Yes, it would.

Q And do you recall that they were laid off -- now, they would be a B and C mechanic in class -- if you recall?

A I didn't know that they were laid off until the Monday of -- would be about the 12th. They were laid off the prior Friday.

Q That was about May 16th; that was about a week before or roughly five days before you were laid off; is that correct?

A Yes.

Q And did you also know Rudy Pabon?

A Yes.

Q And Rudy was a service writer, as you had been before; is that correct?

A Yes, he is.

Q And do you know of your own knowledge that he was also laid off on May 23, 1975?

A I didn't hear it -- learn about that until today.

Q You heard about it today? This is the first time?

A I heard about it. Today is the first time I found it out for a fact.

Q As a mechanic you were making $225 per week; right?

A Yes.

Q Now, when you had the initial discussion with Gussman, Roy, Nick, Hector, et cetera, did you approach them or did

they approach you?

A The initial -- no, it was Paul and Gussman that approached me with --

Q I am just asking who approached you.

A They approached me the first time.

Q And you had prior to that time had made no mention of any union, whether it be this local or any other union?

A Not myself, no.

Q But they chose you?

A They didn't -- they chose --

Q They came to you and chose you to --

A Not then. They chose Paul at the time to get ahold of a representative.

Q But Paul didn't do it?

A Paul was unable to get ahold of a representative. He got laid off.

Q Did Paul go across the street and speak to the person over at Oldsmobile?

A No, I don't believe he did so.

Q But you all knew there was a shop steward right across the street, didn't you?

A Not at the time, no, I didn't know --

Q Somebody else told you later?

A No. I just decided to find out for myself if they were in the shop across the street.

Q I see.

Now, at the previous discussions on May 12, this was had in a -- part of the garage area where the door opens, where the coffee truck comes in?

A In that area, in the shop area.

Q That normally would be across the building, the far part of the business, where the office area is?

A Yes.

Q During that discussion there was nobody present there for management, was there?

A Not to my knowledge.

Q You would have seen them, would you not?

A I would have seen them.

Q So, you know there was nobody there from management; is that correct?

A There was nobody there, no.

Q On your subsequent discussion, on May 19 or May 21, with this part or some of the same employees, was anybody from management present during those discussions?

A No.

Q So that the first time that you made mention of any so-called union activity directly to somebody connected with management was on the 21st, the same day you were laid off; is that correct?

A That morning, yes.

Q And during that same morning had he not told you even before you brought that up that there was no more work for you?

A No.

Q Did he not tell you there was no more work for you, and you went back and waited in the garage?

A That was about after I finished the car, about 12:00 o'clock.

Q And that is when he told you there was no more work for you; is that correct?

A That's right.

Q Now, it was on the 19th that you met Mr. Corallo; is that correct?

A Yes, it was.

Q In the evening, by prearranged appointment?

A By telephone, yes.

Q Yes. All right.

When you sent to see Mr. Corallo, did you discuss how many of the -- how many employee do you say were present at that time working on the premises, including A, B, C mechanics, helpers, parts men?

A I would estimate about ten or eleven mechanics were working in the shop at the time.

Q Before you referred to the parts men.

Now, the parts men are employees, are they not?

A Yes, they are.

Q They are not part of management, are they?

A No, they are not.

Q So, when you referred to the parts men knew about it before, this so-called union activity, you were referring to two fellow employees and not management; is that correct?

A I was referring to two parts men, yes.

Q Who were employees and not part of management.

A They were part of employees, yes.

Q So, when you said before you found out that the parts men knew about it, you were talking about two fellow employees, were you not?

A Yes.

Q So, did it come as a shock to you that the parts men knew about it?

A Yes. The men in the shop said they did not trust them as to letting them know about the union.

MR. McGLYNN: Objection. Irresponsive.

JUDGE FRIEDMAN: Sustained.

MR. WEINRICH: I am sorry, Your Honor.

He is asking -- he wanted to know from the witness whether it came as a surprise to him, and the witness was answering his question. He asked a question which called for a speculative answer. It was completely responsive to his question.

MR. McGLYNN: I said did it come as a shock to him. The answer is yes or the answer is no.

I didn't ask him why or how. I don't ask why or how questions.

JUDGE FRIEDMAN: All right. It's stricken.

Q (By Mr. McGlynn) Now, you know enough about union activities, don't you?

A Yes.

Q Fine.

So that I'm sure Mr. Corallo could testify, if the shop were organized, the parts men would be part of the employee group.

MR. WEINRICH: Objection. Calls for a conclusion of law which the witness is qualified to testify to.

MR. McGLYNN: He just said he was.

THE WITNESS: I know --

JUDGE FRIEDMAN: Hold it, hold it.

Would you read back the question?

(Pending question read by the reporter.)

JUDGE FRIEDMAN: Sustained.

Q (By Mr. McGlynn) In any event, the parts men were employees and not part of management, yes or no?

A They were employees.

Q All right.

Now, on the 19th you had this conversation with Mr.

Corallo concerning the shop?

A Yes.

Q Then did you advise him that there were some ten or eleven employees in the shop at that time?

A Yes.

Q And did you say to him how many you felt you could control or have vote affirmatively for union organization?

A No.

Q Did you discuss with him the possibility of your becoming shop steward if it were organized?

A No.

Q Was there any discussion of shop steward or who would be the representative should there ben an election of union activity?

A No, there was none.

Q None whatsoever?

A Not with the men in the shop or with Mr. Corallo.

Q So, again, I refer back to the fact that on your direct testimony that you indicated that the parts men had knowledge, and that you then felt that you should talk about union activity openly; is that correct?

A I did not feel to speak to the parts men, no.

I spoke to Jim Keily only on the following day, was on the 21st.

Q You indicated that you were concerned about your ac-

tivities because the parts men knew about it.

A No, the men in the shop --

Q Did you express the fact on your direct testimony that you were concerned because the parts men knew about your alleged union activity, yes or no?

A Well, yes.

Q All right.

Now, on that particular morning you said you saw Tom Kelly; is that right?

A Yes.

Q And when you -- you said that he said, "How long you been in the country?"

This was in a form of a greeting, wasn't it?

A I would not know how he had put it.

Q Well --

A To me, the way it sounded to me, is an expression of how long have you been in the country, don't you know enough to leave well enough alone, or something like that.

MR. McGLYNN: Objection, Your Honor. That is pure, unadulterated surmise.

JUDGE FRIEDMAN: Yes. I will strike the latter part of the answer.

Q When Tom walked through the shop, didn't he normally say hello in various ways to his employees? Did he or did he not?

A To myself?

Q Did he say hello to you?

A Yes, every morning or during the day I would say sometime or other he would greet me as, "How are you doing, Mr. Thomas," or such as that.

Q So it's not unusual for him to say hello or make some expression of saying that you are there and acknowledge that you are there, isn't it?

A He would say hello to me.

Q Okay.

Now, you were told that there was no more work for you; and this was after two other fellow employees were laid off, Hector Jimenez and Paul Sisto, the previous Friday, May 16 --

A Yes.

Q Were they replaced while you were there?

A No, not to my knowledge.

Q If they were replaced, would you not see them during Monday, Tuesday or Wednesday of the following week?

A They were not called back to work themselves, no.

Q Were they replaced by anyone else?

A No.

Q Can you see anybody else being interviewed or being brought into the shop to replace them?

A Not while I was there, no.

Q And you subsequently found out that Rudy Pabon, a fourth man, was laid off on May 28; is that right, a service writer?

A Yes.

Q He would also be considered a fellow employee?

A Yes.

Q Well, I guess you don't know, but was Rudy Pabon replaced?

A I do not know at this moment, no, I do not know.

Q And when Jim Keily -- Now, you said something before which confused me -- I will withdraw that.

You initially said that, number one, you asked John Keily if there was any more work for him -- for you, and he said no, to wait around; is that correct?

A He --

Q Did he tell you there was no more work for you?

A He said there was no more work for me, wait around.

Q That was about the same time you told him, "I want to go home early. I want to mail out some fish to Florida"?

A Yes.

Q And that is when he told you to wait inside in the garage area; is that correct?

A No, it was not in the garage area, right in the office area that he told me that.

Q Then you went out to the garage area?

A Then I went back to the garage area to pack up my tools.

Q Back into the garage area; is that correct?

A Yes.

Q Now, initially in your direct testimony you said that John Keily gave you the check; do you recall that?

A No. Jim Keily had brought the check down from the office.

Q I didn't ask you that.

A And John Keily gave me the check.

MR. McGLYNN: May I ask that he try to answer my question?

JUDGE FRIEDMAN: All right, try to answer the question correctly.

A I believe John Keily handed me the check.

Q In your initial testimony you did say that John Keily handed you the check.

A Yes.

Q And then later on in your testimony you said then, "Jim gave me the check."

A That he had packed --

Q Did you state then, "Jim gave me the check"?

A I may have, yes.

Q Did you get two different checks?

A No. I got one check.

Q Did you get two different checks, yes or no?

A No.

MR. WEINRICH: He answered the question. I think counsel is arguing with the witness.

JUDGE FRIEDMAN: I think the witness straightened it out.

Q You received one check?

A Yes.

Q Now, who gave you that check, John or Jimmy?

A John Keily handed the check to me. It was passed on to him from Jim Keily, and Jim Keily was standing there at the time.

I did ask Jim Keily then why I was laid off, and he smiled and said, "I am laying you off for economic reasons."

I then asked him, could I have a pink slip. And he said, "You would have to go up to the office to get one."

Q So you then got your pink slip?

A Yes.

Q So, the first time you had any direct knowledge, or the first time that you directly intervened with anyone in management was all about the same time when you were told there was no more work for you, where you got your check in rapid order, where you had said you wanted to leave early to ship some fish, and he told you to wait a little while, there was no more work and to wait in the garage?

A Yes, he told me to wait in the garage.

Q And that was the first time, around about that same general time that you had any discussion with management about the so-called union activity?

A Earlier that morning.

Q That same morning?

A Yes.

Q And you said they had given you a job to finish up that same morning, the job that Jimenez, I think -- no, Sisto hadn't finished on Friday when he was laid off; is that correct?

A Yes.

Q And that was the last job they gave you?

A Yes.

Q And that was to finish up the work of the man that was laid off on Friday; is that correct?

A Yes.

Q Do you remember the nature of that job?

A Yes. It was an older model Datsun. I would say maybe 1968 or 1967. It was a valve job.

Q And it had an hour or two work to be finished?

I think you told me before, or told the Judge before that it started around 10:30.

A Yes, around 10:30, and I finished it around 12:00, he asked me to.

Q It was after you finished that job which you got at 10:30 on the 21st, to finish the work that had not been finished by Paul on Friday, who was gone already, that you were told there was no more work for you; is that correct?

A Yes.

MR. McGLYNN: Will you excuse me one second, Your Honor?

JUDGE FRIEDMAN: Surely.

(Discussion off the record.)

MR. McGLYNN: I have no more questions of this witness.

JUDGE FRIEDMAN: Any redirect?

MR. WEINRICH: Just a few questions, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Weinrich) When you attended the service school in the beginning of May 1975, what years -- was it a Fiat school?

A Yes, it was.

Q What years Fiat were you being trained on?

A New 1975 models, including the 1975 131 series, which has just come out.

Q When had that come out?

A 1975.

Q What month, do you know?

A I probably would say the car came out later, came

out February or March. We still hadn't gotten the car in our area.

Q Your conversation on the morning of May 21 with -- well, I withdraw that.

Your conversation with Jim Keily on the morning of May 21 that you testified to, when did that take place, time of day?

A About 9:30, between 9:30 and 10:00 that morning.

Q When did you first speak to John Keily?

A Later that day.

Q And what time?

A About between 12:00 and 12:30 when he told me to wait out --

MR. WEINRICH: I have no further questions.

JUDGE FRIEDMAN: Any further questions?

RECROSS-EXAMINATION

Q (By Mr. McGlynn) When you went to school, Mr. Thomas, on the Fiat cars, you said you came back with something like 30 work sheets.

A Twenty to thirty, I said.

Q Well, Fiat gave like various diagrams and such?

A Diagrams that Fiat gave us and diagrams that you would copy down, you know, from Fiat.

Q Right.

A And we recopy them and gave them to each man in the

shop to help them out and to explain to them the situation of the new electrical control units.

Q They would be duplicated and given to the men in the shop like an instruction manual?

A Yes.

MR. McGLYNN: I have nothing further.

MR. WEINRICH: I have nothing further.

JUDGE FRIEDMAN: All right, you may step down, sir.

(Witness excused.)

MR. WEINRICH: Your Honor, before I call my next witness, I ask that, if possible at this time, counsel would be in a position to stipulate that Local 239, IBT, is a labor organization within the meaning of Section 25 of the National Labor Relations Act.

MR. McGLYNN: I so stipulate.

JUDGE FRIEDMAN: All right.

MR. WEINRICH: At this time, Your Honor, I would like to call pursuant to Rule 43(b) of the Federal Rules of Civil Procedure Thomas Keily, who is an admitted officer of the corporation.

JUDGE FRIEDMAN: All right.

Mr. Keily, would you please step up?

Whereupon,

THOMAS KIELY

was called as a witness by the General Counsel and, having

been first duly sworn, testified as follows:

JUDGE FRIEDMAN: Please be seated.

And would you please give your full name and address to the reporter?

THE WITNESS: Thomas Kiely, Birchwood Park Road, Palenville, New York.

DIRECT EXAMINATION

Q (By Mr. Weinrich) Mr. Kiely, is it correct that you are secretary of Kimi Sales, Ltd.?

A That is correct.

Q Following the layoff of Mr. Thomas on May 21, 1975, is it correct that another A mechanic, a gentleman named Pacheco resigned from the employ of Kimi on May 25, 1975?

A Somewhere thereabouts he did. He went on vacation and didn't return to work.

Q Do you have any records that would refresh your recollection as to the date?

A I have some records here.

MR. McGLYNN: On the record, sir, we have the various --

THE WITNESS: We have all the records there, but this is a quick reference sheet.

Q When did he resign?

A Pacheco left -- his last pay day was 6/25/75.

Q And he was also an A mechanic; is that correct?

A That's correct.

Q How many A mechanics did the company have left after the resignation of Mr. Pacheco?

A Two -- I believe there were two or possibly three.

Q Who were the two that you are sure of?

A It was Chris the electrician and Vittorio Motta.

Q Now, between the -- Did you hire any mechanics after June 25th?

A After June 25th we hired a B mechanic on 8/20/75. He was discharged on 9/25.

Q And did you hire any other mechanic?

A We hired -- next man we hired was 10/14/75.

Q Didn't you hire a C mechanic, Paitopsiew, on August 16, 1975?

A Yes. I m sorry. I looked at the wrong place. I looked -- new, 8/13/75 we hired a C mechanic.

Q And on August 19, 1975, you hired a B mechanic, Victor Alfero?

A Victor Alfero, right. That is August 20.

Q Now, had those two employees ever worked for the company before?

A No, sir.

Q Isn't it correct that at that time, with the loss of Mr. Pacheco, the company had been looking to hire an A mechanic?

A Not exactly.

We were still trying to hold down the cost of our operation. So we didn't actually -- we looked for a mechanic, but not an A mechanic because we were getting by and we had elevated Anderson, who was the mechanic to -- who had been employed with us, and he still is employed with us.

Q Didn't Anderson only do body and front-end work?

A He did front-end work, body work, alignment, and also do mechanical work of other type also.

Q So you hired a C and B mechanic?

A Yes.

Q You weren't looking for an A mechanic at that time and unable to find one?

A Not exactly.

Q Not exactly?

A We weren't looking actually for an A mechanic. We were still trying to hold down the cost because we still had a profit structure that was in default.

Q So, when you hired the C and B mechanic, you weren't doing that because you couldn't find an A mechanic?

A We just needed somebody to carry the lesser work that we had that has to be done.

Q What was the pay scale for the B mechanic?

A A B mechanic?

Q Right.

A Around $5 an hour.

Q And a C mechanic?

A C mechanic is $4.

Q Did your men work a 40-hour week?

A Forty hours, time and a half for overtime.

Q Since the 20th of August, have you hired any new employees in the service department?

A August -- we hired a man on September 9.

Q To do what type of work?

A As a C mechanic.

And then we hired a man on 11/24 -- two men on 11/24 as helpers in order to move cars and clean up, just help, they weren't actually mechanic helpers, general shop helpers.

Q Have you hired any other men besides those you testified to?

A I did have -- I hired a man on 10/14/75, but after checking his credentials he was on the same -- he was a helper, doing cleanup work, and we found he had improper credentials, and we let him go.

Q So, is it your testimony that since the 21st of May 1975 you hired two C mechanics and one B mechanic?

A Yes.

Q And you upgraded Mr. Anderson from-whatever he was to an A mechanic?

A Yes.

Q Did that involve an increase in salary?

A I would have to check the payroll records to be certain.

I mentioned upgrade him. We utilized him more in shop use and changed his duties from working on --

Q That is what he had done before for the most part?

A Well, we used him for that, but we utilized him more on the mechanical work. Then we split his operation.

Q Was he able to work on transmissions?

A Yes.

MR. WEINRICH: I have no further questions after I find out if there was an upgrade.

THE WITNESS: What was his salary?

MR. McGLYNN: 240 a week.

THE WITNESS: What is the hourly wage?

MR. McGLYNN: $6 an hour.

JUDGE FRIEDMAN: Is that your testimony, sir, what --

THE WITNESS: Yes. He was an A mechanic, but we elevated him from the pit onto the floor on a 50/50 basis rather than 100 percent.

JUDGE FRIEDMAN: Without a raise?

THE WITNESS: Without a raise, because he was already an A mechanic, so we tried to split his category to pick up the slack.

MR. McGLYNN: Sir, with your permission, I would like to ask Mr. Kiely a few questions.

JUDGE FRIEDMAN: You have the right to cross-examine.

MR. McGLYNN: While we're in this field, this category of employees, I would like to ask him a few questions and ask permission to withdraw him and put Mr. Shea on the stand, and then restore Mr. Kiely at a later time.

JUDGE FRIEDMAN: All right.

MR. WEINRICH: I have no objection.

CROSS-EXAMINATION

Q (By Mr. McGlynn) Mr. Kiely, on that list which has been compiled from those payroll records which are here present in court, is there a list in the middle of various other employees that were laid off or left on their own volition?

A Yes.

Q During this same interim period when Mr. Weinrich was questioning you with other employees?

A Yes.

Q So, you indicated you had hired two C mechanics, a B mechanic and a mechanic helper, or something of that effect; is that correct?

A Yes.

Q Would you please tell the Court, the Judge, how many people during this same interim that you were questioned

about either were laid off or were -- left of their own volition; and identify each one, dates, et cetera.

A We laid off Hector Jimenez on 5/16/75, Paul Sisto on 5/16/75.

Q That was prior to 5/21 when Mr. Thomas, the complainant, was let go?

A Mr. Thomas was laid off on 5/21/75.

Mr. Pabon was laid off on 5/28/75.

If I could add something there, the reason it was 5/28/75 was that we gave him a week's notice due to the fact he was part of management, and he stayed two extra days in order to clean up some warranty work which he was doing, and that was the reason.

He was actually laid off on the 21st, but we gave him a week's notice as of the 21st and gave him some extra days he stayed on h own volition.

Q When Mr. Pabon left, it was on a pleasant basis?

A Yes, on -- we had Pacheco who left on his own accord on 6/25/75. I -- I don't know exactly how he pronounces his name. It's Stephen Gaudrea --

Q Do you want to spell that, please, for the record?

A It's G-a-u-d-r-e-a -- looks like r-e- or r-a or something. I m not sure. Something like that.

We laid him off on 8/20/75.

The reason we laid him off is that he was just --

couldn't do anything. He got in his own way all the time, and he just -- every time, he just wasn't functioning properly.

Kenny Carlin left on his own accord.

JUDGE FRIEDMAN: On what date?

THE WITNESS: 10/15/75.

A (continuing) Vic Ampharo was hired on 8/20/75, and we laid him off on 9/5/75. That was the B mechanic which we hired.

And the helper which we had hired, his name was Moshe, last name is G-a-l-a-n-i-b-a-r-i, and he -- we let him off with improper credentials because he had improper credentials from Israel, and he just -- they were completely out of order. And he was ill.

Just a shop helper, no mechanic helper or anything, at $2.50 an hour.

The newly hired people that we had hired was Part- -- Siew -- that is -- well, the first -- yes, this guy -- first name is Siew and last name is Partap, at a rate of $3 an hour, which he was just a junior helper, 8/13/75.

And on 9 -- September 9, '75, we hired Leo; last name is G-a-n-b-r-o-n-o, at $4 an hour, which is a C mechanic.

On 11/24/75 we hired -- I don't have the first name here. I got just the last name: S-a-g-i- -- pardon me.

That is S-a-g-l-i-m-b-e-n-e, at $3.50.

And we also hired on 11/24/75 David G-i-l-c-h-r-i-s-t at $3.50.

And that was the total employees hired in this period since then that has been laid off and hired and replaced and left on their own volition.

JUDGE FRIEDMAN: Is that it?

MR. McGLYNN: Yes.

I thought that was the proper time to bring that in.

JUDGE FRIEDMAN: I would like to ask just one question --

MR. McGLYNN: Yes.

JUDGE FRIEDMAN: -- in relation to that.

Mr. Thomas testified that he made $225 a week on a 40-hour week.

Was he an hourly rate or was he on a weekly rate?

THE WITNESS: Hourly rate.

I have his payroll record there.

JUDGE FRIEDMAN: No. I just wanted to know.

THE WITNESS: All our mechanics work on --

JUDGE FRIEDMAN: Is the A mechanic rate the same for starting rate?

THE WITNESS: Not exactly. The rate changes slightly depending on if they are licensed car inspectors, New York State inspector.

JUDGE FRIEDMAN: I see.

THE WITNESS: They could be an A mechanic in substance. But, if he has the license, we will award him additional money for that license.

JUDGE FRIEDMAN: Let me ask you this:

Since the layoff of Mr. Thomas, have you hired anyone who you would classify as an A -- I think you testified to this, but I want to make sure -- as an A mechanic at the rate that Mr. Thomas was paid?

THE WITNESS: No, I haven't hired anybody.

MR. McGLYNN: Do you want to come down?

I'm sorry.

JUDGE FRIEDMAN: Any redirect?

MR. WEINRICH: No.

MR. McGLYNN: May I ask the Court permission to address one question to Mr. Thomas, or two, I missed in my notes? I just noticed it now.

JUDGE FRIEDMAN: I don't think General Counsel has rested yet.

MR. McGLYNN: It may be -- Do you have any objection if I --

MR. WEINRICH: I have no further witnesses I am going to call. I am prepared to rest my case.

JUDGE FRIEDMAN: All right.

Is this further cross-examination?

MR. McGLYNN: It's only for the purposes of finding out when he went back to work, if at all, and in what capacity.

JUDGE FRIEDMAN: You mean for the Respondent?

MR. McGLYNN: No, Mr. Thomas.

JUDGE FRIEDMAN: Yes, but for the Respondent, your client?

MR. McGLYNN: He never went back to work for my client.

JUDGE FRIEDMAN: That is not material.

MR. McGLYNN: All right.

JUDGE FRIEDMAN: All right, so long as the Respondent rests.

MR. McGLYNN: Mr. Shea will only be a few minutes.

JUDGE FRIEDMAN: Mr. Shea has to get back to his office. He is a CPA, and he has work he has to get back to.

I would prefer to see Mr. Shea's testimony finished before lunch hour.

MR. McGLYNN: Should we put him on now, sir?

JUDGE FRIEDMAN: Please.

Whereupon,

JOHN L. SHEA

was called as a witness for the Respondent and, having been duly sworn, testified as follows:

JUDGE FRIEDMAN: Please be seated, Mr. Shea.

Will you give your full name and address?

THE WITNESS: John L. Shea, 86-28 106th Street, Richmond Hill, New York 11418.

DIRECT EXAMINATION

Q (By Mr. McGlynn) Mr. Shea, you are a certified public accountant?

A I am.

Q And your firm name is Fusco & Shea; is that correct?

A That's correct.

Q And, in that capacity, do you handle the affairs of the Respondent here, Kimi Sales?

A I do.

Q All right.

Now, you have for some time, is that true?

A I have.

Q Now, as a result of your examination of the books of the company concerning the first quarter operation, did you come up with figures showing a breakdown of the overall operation of the premises?

A We did. But it's four months, not a quarter.

Q I'm sorry. Through April 30, '75?

A Yes.

Q From January 1 of '75?

A Right.

Q I'm sorry.

Now, as a result of that examination, number one,

did you have a conversation with Tom Kiely?

A I did.

Q And where did that conversation take place?

A At the offices of Kimi Sales.

Q And do you recall the date?

A May 12, 19 5.

Q Was that the date you were regularly scheduled to come in and finalize the book for that period of time?

A That was the date I was present.

Q Subsequent thereto did you give Mr. Kiely a letter indicating the financial condition as of April 30, 1975?

A I did.

Q And May I show you two copies of that letter?

JUDGE FRIEDMAN: Was that the letter that was attached to the pleading?

MR. McGLYNN: Yes, sir.

JUDGE FRIEDMAN: I just wondered.

Q Are these true and exact copies of the letter sent by you to Mr. Kiely on May 29, 1975?

A They are.

MR. McGLYNN: May I offer them as Respondent Exhibit 1?

JUDGE FRIEDMAN: Surely.

Do you have any objection?

Do you want any voir dire?

MR. WEINRICH: I object to the letter being offered.

The witness is here to testify. If the letter is being offered to show that a communication was made, I have no objection to that; but, as to the truth of the matters asserted in the letter, I do object to that.

MR. McGLYNN: He has a right to cross-examine.

I was trying to put it in early so everybody could have a copy in front of them.

JUDGE FRIEDMAN: Are you going to have further testimony with regard to the figures in that letter?

MR. McGLYNN: Absolutely.

JUDGE FRIEDMAN: I will tell you I will just hold off the receipt of the letters until such time as the figures are testified to.

MR. McGLYNN: I will withdraw it at this time.

JUDGE FRIEDMAN: And, inasmuch as they are part of the pleadings anyway, they are already in evidence.

MR. McGLYNN: All right.

Q (By Mr. McGlynn) All right, Mr. Shea, on May 12, did you discuss various figures concerning operating income, operating loss, et cetera, and the various aspects of Kimi Sales?

A I did.

Q Will you kindly tell the Court what your findings were; number one, how do you arrive at these?

A Kimi is a franchise dealer of both Datsun and Fiat.

Under their franchise agreement, they are required to give monthly financial statements to each of the factories.

We prepare a financial statement at the end of each month. These statements are submitted to both Fiat and Datsun.

Our normal procedures in Kimi's case, when the statement has been finished for a particular month, we sit down with Mr. Kiely and discuss the operating results for the month and for the period.

Further, these financial statements are examined very closely by both Fiat and Datsun, and they submit rundowns following the submission of this statement comparing Kimi's operation with other operations in the district and in the region.

Q Now, from an examination of the books, records, et cetera, which you certified to, I assume, these reports?

A No. These are unaudited reports.

Q But you personally did the books concerning this particular corporation?

A With an assistant.

Q All right.

Now, concerning the -- the period from 1/1/75 to April 30, '75, would you tell us -- give us a resume -- you know the letter that we submitted?

A Right.

Q Was a resume of your figures; is that correct?

A That's correct.

Q Would you state for the record the operating income, the operating loss, and where you found these various aspects?

MR. WEINRICH: Your Honor, I would like to point out for the record that the witness does have two documents in front of him at this point which he, it appears to me, was about to refer to.

I don't really object to him referring to them, but I would like them to be identified.

MR. McGLYNN: I have no objection.

JUDGE FRIEDMAN: All right.

Objection is well taken.

MR. McGLYNN: This is a Fiat Distributors, Inc., dealer financial statement.

Where would I find the date?

THE WITNESS: On the top.

MR. McGLYNN: Dated through 4/30/75, from 1/1/75 to 4/30/75.

MR. WEINRICH: Could we give it a number and mark it possibly?

MR. McGLYNN: Well, for identification, I assume this would be Respondent's No. 2.

JUDGE FRIEDMAN: Exhibit 2 -- no -- yes, 2 is right. What is that? Fiat or Datsun?

MR. McGLYNN: Fiat Distributors, Inc.

(Documents above referred to marked Respondent's Exhibits Nos. 1 and 2 for identification.)

Q (By Mr. McGlynn) All right, Mr. Shea, getting back to my previous question, from your personal knowledge and examination of these records for that period, 1/1 to 4/30/75, you reached a bottom line in various figures as far as this income and loss were concerned; is that correct?

A That's correct.

Q All right.

Would you state for the Court your finding for that particular period?

A The net loss for the four months was $5,489, and that was broken down as follows --

Q How about the operating income first?

A Well, I gave him the bottom line first.

New new car department had a profit of $11,287, the used car department had a profit of $1,414, the parts department had a profit of $12,093, the service department had a loss of $28,972.

There were nonoperating deductions of $1,311.

That is total loss for the period: $5,489.

Q All right.

Now, I will direct my questions at the service department.

The loss over a four-month period of 28,972; is that correct?

A That's correct.

Q And, as a result of that finding on May 12, 1975, did you have a discussion with Mr. Kiely?

A We did.

Q And where did that discussion take place?

A At Kimi Sales.

Q About what time of the day?

A I would say probably about 4:30, 5:00 o'clock, which would be the normal time we would finish the financial statement.

Q And at that time your figures were up to date and reflected what you just testified to?

A That's right.

Q Did you discuss with Mr. Kiely the service department?

A I did.

Q And would you give us the substance of the conversation, indicating what you said and what he said, not a summarization?

You follow me? I said to him and he said to me.

Q Well, I pointed out to him the fact that the service department had a loss of $28,972, that the losses had been

JUDGE FRIEDMAN: On the record.

consistent for the -- each of the four months, and that I felt that it was time that he curtailed his service operations. I felt that they were perhaps spending too great a time on warranty work.

MR. WEINRICH: I move to strike his feelings.

THE WITNESS: All right, I stated that.

Q You stated -- Go ahead.

A I stated that they were spending too much time on warranty work in the service department which could be spaced out and would help to reduce the loss.

Q In other words -- Did Tom then answer back to you as to what he would have to do?

A He indicated that he was going to review the service operations and make the necessary changes.

Q When he said "necessary changes," you mean what?

A My suggestion was he reduce the number of people employed.

Q And you so indicated that in a formal letter, did you not?

A I certainly did.

Q And, to your knowledge, has he -- You are familiar with the payroll records as such?

A Right.

Q During that time -- well, it's all on the record, but during that short time alone, within the space of

between the 16th, I think, and the 28th?

A Right.

Q He let go of the service writer, an A mechanic, a B mechanic, and a C mechanic?

A That's correct.

Q Is that correct?

A That's correct.

Q And, in fact, since then there have been more people laid off than have been hired, even in lower capacities?

MR. KIELY: Yes.

MR. WEINRICH: I move to strike counsel's unsworn testimony.

MR. McGLYNN: That was based on Mr. Kiely's testimony before.

MR. WEINRICH: But we are on direct testimony.

JUDGE FRIEDMAN: If anything else, it's leading.

I will strike it, of course.

MR. McGLYNN: Yes, sir.

Q (By Mr. McGlynn) Well, Mr. Shea, all of the other departments showed an operating profit, did they not?

A That's correct.

Q And as you refer to the warranty work -- in other words, the warranty work comes in at what? A set rate, a fixed rate?

A It would come in as to the way appointments are made.

MR. McGLYNN: All right.

I have no further -- well, at this time, sir, may I now reoffer Exhibit 1 for the purposes of introducing same into evidence.

He indicated that he did send such a letter; but, as you say, it's part of the record, but formally under his testimony.

JUDGE FRIEDMAN: All right.

MR. WEINRICH: I have no objection for it being offered to show that he sent such a letter.

JUDGE FRIEDMAN: All right.

Received.

(Document heretofore marked Respondent's Exhibit No. 1 received in evidence.)

MR. McGLYNN: I have no further questions.

CROSS-EXAMINATION

Q (By Mr. Weinrich) How long have you been the accountant for Kimi, Mr. Shea?

A Since 1971.

Q Are you -- Do you do work for other auto dealers as well?

A No, I do not.

Q This is your only auto dealership?

A That's right.

Q Besides from your business relationship with the

officers of Kimi, do you have any personal relationship with them?

A No, I do not.

Q No family relationship?

A No family relationship.

Q How often do you go into Kimi to go over their books?

A Once a month.

Q The Fiat dealer statement you referred to as well as the Datsun statement, is that prepared on a monthly basis?

A On a monthly basis.

Q And you prepared that from the original books of entry?

A We do.

Q And Respondent's Exhibit No. 2, this is for a three-month period?

A Four months.

Q Do you normally prepare such a statement for a four-month period as well as on a monthly basis?

A Yes -- well, this is monthly and four months. You have monthly and -- month, which would be the month of April; year to date would be January to April.

Q I see.

Is it prepared every month on a year-to-date basis?

A Every month.

Q Now, you had written a letter on May 29. In that

letter, you refer to operating income --

A Right.

Q -- from the various departments.

A That's correct.

Q By that, do you mean profit?

A Right, exactly, net income.

Q Is it your normal practice to write such a letter following your monthly conversations with the company?

A No, it is not.

Q Were you requested to write this letter?

A I was.

Q Do you recall when you received this request?

A I would say probably around the 29th or thereabouts.

Q Who requested you to write the letter?

A Mr. Kiely.

A Which Mr. Kiely?

A Thomas Kiely.

Q Did he tell you for what purpose?

A He asked me if I would put into writing what we had discussed at our last meeting. And I said I would, and he told me the reason for it.

Q What did he say the reason was?

A He said he had some union problems and, because of the layoff I recommended that I put this into writing.

Q In your letter of May 29, do you anyplace say in your

letter that you recommend layoffs?

A Well, not specifically.

I say -- if I can read from it -- "Since the service department losses have been consistent during the current period, we advised immediate steps to reduce the cost of operating your service department."

Q But you don't say that you recommended layoffs?

A No, I did not.

Q Now, in your testimony during direct examination you were asked to testify to your discussion with Thomas Kiely.

Was anyone else present?

A No.

Q And you testified that you pointed out the service department loss to him, and you said that the loss was consistent for each of the four months.

A Right.

Q And that he would have to curtail his service operation.

A Right.

Q And you then went on to say that you felt, and then you corrected yourself and said that you stated that too much time was being spent on warranty work, and it should be spaced out.

A That's correct.

Q Was it before or after you made that statement that

you suggested that you -- that he engage in some layoffs?

A Well, it would be in connection with it, because the only element of expense that you could control on a day-to-day basis is your payroll.

Q How do you space out your warranty work?

A You don't make that many appointments.

In other words, you could make six appointments a day rather than twelve, and you could cut the number of mechanics in half.

Q Aren't you having the same amount of work on a monthly basis?

A Not on a warranty basis, because it's not that profitable. And during that period the pay labor was not that great.

Q So, you were going to eliminate the warranty work by spacing lesser --

A Lesser appointments and space it out.

Q When you say "space it out" --

A Did you ever call an automobile dealership if you had a warranty job to do and ask them if you could have an appointment, they would tell you you can have an appointment tomorrow, next week, ten days from now? I have had that experience.

Q You are saying they shouldn't accept the same number of warranty appointments in a given period of time?

A That's correct.

Q Wouldn't they eventually get the same number of appointments?

A They might.

And people might get tired and go to another dealer.

Q Do you know whether in Fiat for warranty work they must bring the car to the purchasing dealer unless they live more than fifty miles away from the purchase?

A I don't know.

Q You are not familiar with that.

Did you say directly to Mr. Kiely that, "You are going to have to lay off people," or only say, "You will have to space the work out"?

A I said he would have to lay off people, because that is the largest element of expense.

Q Did you suggest how many people would have to be laid off?

A I did not.

Q Did you suggest in what categories the people would have to be laid off?

A I did not.

Q Now -- But you are aware of the fact that he laid off people?

A I am.

Q Do you have with you the net loss for the four months

following April 30, 1975?

A I don't have them.

I just have this statement. This is what --

Q You don't have that information?

A I don't have it with me.

Q Do you know what it is?

A Not without the statement.

They have a continuing loss, I will tell you that.

Q A continuing loss?

A That's right.

Q From the service department?

A That's right.

Q Did they have a loss in the service department for the four-month period ending December 31, 1974?

A I could almost guarantee it, because there was always a loss in the service department. It's the size of the loss that is important.

Q Was your concern on May 12 the size of the net loss for the entire operation or the size of the service department operation?

A The size of the service department operation.

The service loss for 1974 was approximately $45,000 for the entire year.

Q Was approximately?

A Right.

Q You don't have the figures with you, though?

A No.

Q And on a monthly breakdown this exhibit will show the monthly service department loss?

A Well --

JUDGE FRIEDMAN: You are talking about Exhibit No. 2?

MR. WEINRICH: Respondent's 2 for identification.

A Will show the loss for the month of April, which is $8400, which would mean that the loss for the prior three months was $20,500.

Q But you don't have the monthly break down?

A Well, I think, if you subtract one from the other, you can get it.

Q I can get what the two-month period was?

A Three months.

Q You couldn't tell me what it was for January, February, or March?

A No.

Q Now, do you know what the monthly loss was for May?

A No, I don't have it.

But I can tell you it's a continuing loss; even with the cuts that had been made in the payroll, the loss has continued.

Q Has it continued on the same basis?

A Somewhat reduced.

Q Has it been as great?

A On a somewhat reduced basis.

Q Do you know the extent of the reduction?

A No. I don't have it with me.

Q Were financial statements prepared each month thereafter?

A Yes, they were.

Q Do you recall if in June you recommended any other action be taken to cut the loss?

A I told him he would have to take continuing action to keep the payroll under control in the service department.

Q What action did you recommend, if any?

A The same thing. He would have to curtail his payroll.

That is the largest element of expense, and the only one that is controllable.

Q And the same would be true in every month thereafter?

A That is exactly correct.

Q Do you know how many employees he laid off during the month of June?

A No.

But I think Mr. Kiely can tell you. He has his record.

Q So, all you can testify to at this time is that the loss has continued despite efforts to control it?

A It has.

MR. WEINRICH: I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. McGlynn) Just to clarify one thing, Mr. Shea, you wrote this letter on May 29, 1975, I assume; is that correct?

A That's correct.

Q That was pursuant to a request --

A That's correct.

Q -- with the knowledge the same is going to be submitted --

A That's correct.

Q -- with a view towards this proceeding; is that correct?

A Yes, that is correct.

Q And you refer to the fact that your meeting was May 12th.

A That's correct.

Q Is there one iota of doubt in your mind that it took place on the 12th?

A Yes, because that was at Kimi's.

Q And you spent the whole day there?

A Spent the whole day.

Q In reflecting back, you are familiar with the employee records that we have with us?

A Yes.

Q That meeting was on May 12; and May 16, 19 5, two other people were laid off?

A That's correct.

MR. WEINRICH: I object to this line of questioning.

JUDGE FRIEDMAN: You have no personal knowledge?

THE WITNESS: I have no personal knowledge.

JUDGE FRIEDMAN: I sustain that objection.

MR. McGLYNN: Mr. Weinrich seems to imply there is something strange. This is not a backdated letter; this is a proper letter pursuant to my letter -- I didn't speak to him correctly.

JUDGE FRIEDMAN: You are testifying by your question.

MR. McGLYNN: I see.

Q (By Mr. McGlynn) Mr. Shea, this letter reflects exactly what went through, or part of what went through that conversation of May 12; is that correct?

A That's correct.

Q And you are familiar with the employee records --

A I am.

Q -- and of the two employees laid off on the 16th, May 16th, Sisto --

A If you show me the record, I will tell you -- What can I tell you?

MR. McGLYNN: All right. Mr. Kiely already testified to that.

No further questions of Mr. Shea.

MR. WEINRICH: I have nothing further.

JUDGE FRIEDMAN: Thank you.

(Witness excused.)

JUDGE FRIEDMAN: Referring to Respondent Exhibit 2, did you have any intention of submitting that?

MR. McGLYNN: The Fiat statement?

I told Mr. Weinrich I would like --

JUDGE FRIEDMAN: The point that I am trying to make is that you are -- you don't intend to introduce it?

MR. McGLYNN: I have a summary of figures. It says the same thing, just on a different form.

JUDGE FRIEDMAN: I realize Mr. Shea testified the letter had the summary of the figures that were in the sheet.

MR. McGLYNN: I told Mr. Weinrich, if he wants a copy, we'll supply it.

MR. WEINRICH: Can I keep it and make a copy of it upstairs?

MR. McGLYNN: No objection. I already offered you the copy.

JUDGE FRIEDMAN: All right.

At this time, we'll adjourn until 1:45.

MR. McGLYNN: 1:45, yes, sir.

JUDGE FRIEDMAN: Off the record.

(Recess taken at 12:40 p.m.)

BEST COPY AVAILABLE

AFTERNOON SESSION

1:55 o'clock p.m.

JUDGE FRIEDMAN: On the record.

The record will indicate that Mr. Corallo, who appeared on behalf of the Union, is not present in the room this afternoon, the afternoon session.

All right, gentlemen, if you please.

Does the General Counsel have any more witnesses?

MR. WEINRICH: I was going to state before that General Counsel has no more witnesses. I neglected to state that I rested my case, but I do.

JUDGE FRIEDMAN: All right.

MR. McGLYNN: I am calling -- even though Tom Kiely was on the stand, I am calling Mr. Kiely because he and his brother is running the business, and he is out sick today.

So, if I may, I will put him on now.

JUDGE FRIEDMAN: All right.

Whereupon,

JAMES KIELY

was called as a witness by the Respondent and, having first been duly sworn, testified as follows:

JUDGE FRIEDMAN: Please be seated.

Give your full name and address to the reporter.

THE WITNESS: James Kiely, 43-18 214th Place, Bayside.

That's Queens.

DIRECT EXAMINATION

Q (By Mr. McGlynn) Now, Mr. Kiely, you are an officer and director of Kimi Sales, Ltd.; right?

A Yes.

Q And as part of your employment are you at the -- what we call the mechanical shop, rather than the body shop or the sales room?

A Yes.

Q And are you familiar with the Petitioner, Mr. Thomas?

A Yes.

Q Seated at the table.

Now, Mr. Thomas had come back to your employ in March of 1975; is that correct, approximately?

A Yes.

Q And he was subsequently discharged on May 21, 1975?

A Yes.

Q That is correct?

Now, had there been a meeting between or amongst you and your other two brothers regarding the service shop or the mechanical shop where you are?

A Yes.

Q Regarding the fact that it was losing --

A Yes, there was.

Q And was there a decision made regarding releases of

any employees?

MR. WEINRICH: Objection, Your Honor.

I think he is leading the witness.

JUDGE FRIEDMAN: All right.

Sustained.

He is getting into the subject. I will reverse myself.

Go ahead.

MR. McGLYNN: I didn't think I was going to say what is the decision.

JUDGE FRIEDMAN: Yes.

Q (By Mr. McGlynn) Was a decision made?

A Yes, a decision was made.

Q What was the substance of the decision?

A That we were going to let some people go because we weren't doing as well as we expected to, and loss of revenue and the financial problem wasn't too well.

Q Would you say now were men let go pursuant to this discussion?

A Yes.

Q And how many men were let go altogether?

A Four were let go.

Q When were the first of them let go?

A It was on a Wednesday.

Q Would it be -- Now, this gentleman left May 21. That is part of the record.

A He left on a Monday.

Q Was this prior to him --

A There were two men left prior to him.

Q And do you remember their names offhand?

A Sisco, Sisco and who else?

JUDGE FRIEDMAN: Sisco did you say, sir?

THE WITNESS: I think it was Sisco.

Q Was the other one Jimenez?

A Might have been his name.

Q And they left prior to this gentleman leaving; is that correct?

A Yes.

Q Now, at the discussion -- You didn't meet with Mr. Shea, but your brother Tom did; is that correct?

A Yes.

Q All right.

Subsequent thereto and prior to these other two men being let go, Jimenez and Sisto, you then had a meeting with Tom and with John?

A That's right.

Q And that is where it was decided that these gentlemen would be laid off on the 16th.

And was there any discussion and decision regarding Mr. Thomas?

Now, this would be prior to the 16th of May; is that

correct?

A Yes, we were going to let him go also, and one more man.

Q When were you going to let him go?

A We wanted to finish up the work Monday. I was going to let him go Monday night.

Q When did you eventually let him go?

A Monday afternoon.

Q Would it refresh your recollection if I gave you a date of May 21?

A May 21, a Monday. I'm pretty sure that was it. I think that was the day.

Q Let me show you the diary.

What was the end of your work week?

A Wednesday.

Q So, if May 21, would be a Wednesday, was that the normal day when you would let them go?

A Well, we were going to let the men go according to how we got the work done.

Q Mr. Thomas said he had been assigned to a job that had been left to Paul, which left the previous Friday.

A I don't remember.

Q You said finish up jobs, short jobs?

A Yes. I was going to finish out --

Q On the day when you were going to let him go, do you

recall the circumstances of that day?

A Well, John, my brother, he said he was going to leave a half day.

I said hold up, I was going to let him go, not that he come back.

Q In other words, he was going to be terminated at 5:00 o'clock the day he was let go?

A I had intended to, yes.

Q And John said he wanted to stay over until the afternoon -- I mean to take off the afternoon?

A John said he was going to take off the afternoon.

I said, "Don't let him off because --" I happened to be in the body shop.

Q The body shop was on another street?

A Yes.

Q Did --

JUDGE FRIEDMAN: Just a little bit slower. It will help a little bit.

Q Did you then arrange for a final check to be drawn?

A Yes.

Q To pay off his wages?

A Yes.

Q And did you give him the check, if you recall, or did John give him the check?

A I am pretty sure I gave him the check.

this a vague or mysterious date

Q All right.

But it's perfectly clear in your mind that the decision regarding -- Now, there was a fourth man laid off after him, was there not?

A Yes. Rudy.

Q Rudy volunteered ever to stay on?

MR. WEINRICH: Objection.

JUDGE FRIEDMAN: Sustained.

Q Did Rudy stay on some additional time after Mr. Thomas?

A Yes.

Q When did he, roughly, receive a termination notice?

A I don't know.

I spoke to him. And I had warranty, lot of paperwork that he was involved in, and he was going to go into business for himself. And he said he would stay to finish out the work, and then that would be it.

Q All right.

So, Rudy was the fourth of the group?

A Right.

Q What was Rudy's duties?

A He was the writeup man, the warranty man.

Q More or less considered part of management?

A Yes.

Q And now Mr. Thomas was a class A mechanic, I take it?

A Yes.

Q And the other gentlemen, Jimonez and Sisto, one of them was a B and one of them was a C mechanic?

A Yes.

Q And since that time you have not hired or rehired any --

MR. WEINRICH: Objection, Your Honor.

JUDGE FRIEDMAN: Sustained.

You are leading. Every one of your questions have been leading.

Q Have you hired any A mechanics since that time?

A No, just a helper.

Q Do you recall, or do you remember whether or not at any time prior to the 16th day of May there had been any statement of any nature or kind, prior to May 16, not May the 1st, nad there been any statement of any nature or kind by Mr. Thomas regarding union to you?

A No.

Q Now, on May 21, the day he was scheduled to be let go according to your testimony, do you recall whether or not he made any mention of a union?

A He didn't mention a union.

He did ask me why he was being laid off.

Q He didn't mention union to you?

A No.

Q When he asked you why he was being laid off, what did you say, if anything?

A I told him it was an economy move.

In fact, he asked me twice.

Q When did he ask you the first time?

A Well, at that time, as if he didn't hear me.

Q And then he asked you again?

A Right. And I told him it was an economy move.

Q Did you explain to him at all that two others had been let go already?

A I thought he had known that.

Q He in turn had to finish up their work; is that correct?

A Yes.

Q So he did know that they were gone?

A He knew that they were going, sure. Everybody knew that they were gone.

Q Had he not said that he wanted to take off the half day, what would you have done?

A I was going to wait until the end of the day. That was my intention.

Q Right. And then you would have paid him a check in full?

A Right.

Q And is it your testimony that he was scheduled to be

let go pri r to May 16, 1975?

A Yes. There were four men all figured out.

Q Did his being let go have anything whatsoever to do with any question of union activity?

A No. No reason for that.

MR. McGLYNN: No further questions.

CROSS-EXAMINATION

Q (By Mr. Weinrich) What are your precise duties in connection with Kimi Sales, Mr. Kiely?

A I run the service.

Q You run the service department?

A Yes.

Q For how long have you run the service department?

A Approximately two years.

Q Is it your -- Where is your office located?

A The service office?

Q Right

A Well, actually there is no office. I just have a desk.

Q Is it on the floor of the service department?

A Well, it is -- it's on one floor, but there is a partition actually where the men work and where people come in, like a room like this.

Q Now, are you responsible for hiring and firing people within the service department?

A Yes.

Q So, was it you who made the decision which four men should be let go?

A Fairly well, yes.

Q Did you make it or didn't you?

A I believe I was the one that mentioned it.

In other words, Rudy I didn't mention, but that had to be.

Q Why did that have to be?

A Well, they wanted four men because they wanted to reduce it so many men.

Q Who wanted to reduce it so many men?

A My brother.

Q So, your brother came to you and said, "We have to get rid of four men. Pick them"?

A Pick out who we have to let go.

Q When did that conversation take place?

A That was approximately a week -- I guess about a week before.

Q A week before when?

A About a week before we left -- what was that, Sisto?

Q Week before you let Sisto go?

A I would say, nothi g -- yes. We talk every night anyway.

Q Do you recall what day of the week that conversation took place on?

Q But you say it was a week before?

A Within that week, I would say.

Q Within that week?

A I would say so.

Q If Sisto was let go on the 16th of May, that Friday, when would the conversation with your brother have taken place?

A Five or six days before that.

Q Any day within five or six days before, but you don't recall the specific day?

A No.

Q Where did the conversation take place?

A Well, we usually have our conversation around the corner in the sales.

Q In the sales department.

Was anybody else there?

A I think our accountant may have been there.

Q You are not sure?

A I am not sure.

Well, if it was at night and we were talking about it -- I think it was at night. I don't remember if he was there or not; he may have been gone. I am not sure.

Q What did your brother say to you?

A Well, first he told me the facts of life, that things weren't too well, weren't doing too well.

Q Did he say why he wasn't doing to well?

A Mentioned the service department seemed to be the headache all the time.

Q You constantly suffered a loss in the service department?

A Quite a bit.

I mean it's hard with the work. I mean, you have your comebacks and stuff like that.

Q How long have you been in the automobile business?

A Twenty years.

Q Isn't it a fact that the service department is the department that usually suffers the loss?

MR. McGLYNN: Objection.

A I wouldn't say that.

MR. McGLYNN: Objection.

He is not the accountant. He is, in effect, service manager. He has nothing to do with figures. He can be an expert mechanic, but does not qualify him to answer the question.

MR. WEINRICH: May I ask him a question before you rule?

JUDGE FRIEDMAN: Yes.

Q (By Mr. Weinrich) Are you John Kiely, Jr.?

A I am James.

Q Are you the vice president of the corporation?

A Yes.

Q How long have you been vice president?

A I forget. A few years.

MR. WEINRICH: I submit that, as a man in the automobile business for twenty years and as vice president of the corporation, he is qualified to testify as to the practice in the automobile business, if not in his own company.

MR. McGLYNN: Not in accounting, sir, in breaking down figures.

He knows what he takes in and turns it over, and the accountant breaks down the cost figures and the income. And all he does, as most of us do, is sign their returns. It does not make him an accounting expert certainly.

JUDGE FRIEDMAN: I will permit the question if he knows.

If he doesn't know, he can say so.

Q (By Mr. Weinrich) Do you know if it's the normal procedure in automobile dealerships for the service department to suffer the loss?

A I don't know if it's normal procedure for that.

MR. McGLYNN: Excuse me, sir.

I am now going to object as being immaterial.

The fact is, if you are losing money and you are going to put your company under water if you try to solve that,

what is the materiality if another company is surviving even if they have a loss?

I don't consider it material.

JUDGE FRIEDMAN: Overruled.

Q You don't know the answer to that question?

A No.

Q Do you know for how long Kimi has suffered a loss in its service department?

A I know when I got there it was still suffering a loss, because, when I took over, my brother was sick and I went down there; I know they were at a loss then.

Q So, ever since you have been there, you have been losing money in the service department; is that correct?

A Right.

I don't know exactly how much, but I know we weren't doing too well. Did get a little profit, but still not that well.

Q And you are still not doing well in the service department?

A I would say we are doing a little better than when we started.

I fed I am doing a pretty good job. I won't say to what extent, but, as far as it's just above water, I understand.

Q Getting back to your conversation with your brother,

he explained the facts of life to you that the service department was suffering a loss.

What else did he say to you?

A Have to tighten up the reins and work a little harder, and I am working harder.

Q Did he say how the reins would be tightened up?

A Well, have to leave some men go. That was one way. And look around and see what other ways I can cut down, and this and that and the other thing, to try and generate some steam to make conditions improve.

Q He said some men would have to be let go?

A Yes, we were carrying too many men.

Q Did he indicate the number of men that would have to be let go at that time?

A Well, he more or less thought six. And -- you know, I didn't really want to let everybody go. I like a little help.

Q Well, who came up with the figure four.

A I did in the end.

Q That same evening?

A I don't know -- no, I don't know if it was the same evening. We discussed it in two evenings or something like that.

Q And on what basis did you choose the four men?

A Well, we had to let somebody go ineach category.

As far as the mechanics go, Thomas goes as an A mechanic.

My brother was back in action after long illness there, and --

Q Which brother is that?

A John. He is a grade A mechanic.

I am a fairly decent mechanic myself. I am a good body man. I did body work mostly.

And we felt that we could get by on one there.

And, as far as the other two fellows, one fellow was giving me a problem anyway in his production. And I think one fellow, he couldn't read English too well, and that was a real big handicap to me there.

And the fellow Rudy, he had mentioned that he was going to go into business for himself.

So, me and John talked it over, and said, "Well, we will both do Rudy's job; and, if we work hard enough, maybe we can work a little harder. That is all."

Q Well, did Rudy resign, or did you lay him off?

A I told him I was laying him off, and he said that is nothing, he had told me -- he said, "I had told you previously," and he said just rushes things for him what he had intended to do.

Q He had intended to go into his own business?

A Right.

Not right at the moment, but he said he rushed it.

and the service.

Q So, you replaced the A mechanic with your brother and yourself who also do mechanic's work?

A Well, didn't exactly replace them, but when somebody needed a hand, between the two of us, with our knowledge, we could tell them what to do. Actually I don't do the work.

Q Did your brother do the work?

A No. He is actually doing warranty work in the front. But I have something real technical that --

Q You are also doing the warranty work up front assisting him?

That was the job that Rudy had done; correct?

A Right.

Well, I help in the parts also.

Q Well, who is doing the actual mechanic's work?

A Mechanics did that.

Q And they are working harder since Mr. Thomas has gone?

A I don't know if they are working harder, but they are all right. I have no complaints on them.

Q Have the number of vehicles you serviced gone down since Mr. Thomas was laid off?

A I would say we do a little less because we have less men. We have to do a little less. Not that much, I don't think.

Q So, you have found you have been able to do almost

A It sounds fairly close.
the same amount of work with less people?
A Yes, I think we do. I feel we do.
Q How have you accomplished that? What other measures have you taken?
A Well, spacing them out, giving different men the job instead of taking helpers.
We're trying to pinpoint a certain job operation. You know, we have --
JUDGE FRIEDMAN: We would like to have you repeat your answer so that the reporter can get it.
You know, we pinpoint certain men for -- you know.
THE WITNESS Certain service jobs, like that.
Q I think we have lost it.
When did you advise Mr. Jimenez and Mr. Sisto that they would be terminated?
Did you advise them?
A Yes, I told them.
Q When?
A It must have been that Wednesday. I forget exactly now, but I usually tell everybody, I hire them and I fire them.
Q Did you tell them in the morning or afternoon?
A I usually --
MR. McGLYNN: Objection.
A I don't remember.

MR. McGLYNN: Objecting as to materiality.

Since these men were let go five days prior to the petition herein, I don't see how it has a bearing. As obvious from what Mr. Kiely read into the record, there have been four or five other people that were laid off; they do this by day. I don't see the materiality why two men were let go, or when.

MR. WEINRICH: I think it's very material, Your Honor.

The witness has testified that at some unknown date a decision was made to terminate four men, that for assorted reasons -- which I will go into further -- it was decided to let the men go at different times.

I think it's material to see when the first two men were advised that they would be laid off for a decision made a week in advance as compared to when Mr. Thomas was told he would be laid off.

The testimony is he was told in the afternoon, and only at a time when he was going to leave, otherwise he would not have been told until quitting time.

I want to see if there is a variance.

MR. McGLYNN: On that same point, it is not some vague date. He said some five or six days.

May be in that vent because he is not a rehearsed witness, because we didn't feed him dates. I don't think it was of that great importance. He said -- it was shortly

before the two men were laid off, so I didn't consider this a vague or mysterious date.

And, as far as meetings are concerned, these people meet every day. I can get on the stand and testify to that.

MR. WEINRICH: You already have.

MR. McGLYNN: I don't think there is ground for that inference.

JUDGE FRIEDMAN: I am going to permit it.

I am the one who will have to separate it out and make the inferences or not make the inferences.

Go ahead.

Overruled.

Q (By Mr. Weinrich) Do you recall when you advised them that they were being laid off?

A I don't know exactly, but whenever I lay somebody off usually I try to tell them around 3:00 o'clock, give them a chance to get their tools together.

Q 3:00 o'clock on the same day?

A Yes.

Q Although the decision to terminate them was made a week in advance?

A Yes.

Q What was the reason why Mr. Thomas was being kept on after the 16th of May?

A To finish out the jobs that we were workong on in

the shop. Some jobs take a little longer.

And I wanted to schedule myself to try and proceed with what I was trying to do.

Q Were they jobs he was working on?

A Well, we have different jobs every day, so I don't know exactly what job.

Q You don't know what job he was working on the 21st?

A I don't know what job he was working on that day.

If he says it was a helper, then that is who it was.

Q Had Jimenez and Sisto completed all of their work when they were terminated?

A I don't know if they did or not.

Q Now, calling your attention to May 21, what time do you usually arrive in the morning?

A When I get there? I am there at 7:00 o'clock.

Q Were you there at 7:00 o'clock on May 21?

A Around that time I should be there.

Q What time did you first see Mr. Thomas, if you remember?

A Well, he was an early bird. I used to see him about 7:30, because I used to stop in the body shop at 7:00 and then come around there, so I set the body shop up first and then come around there to the mechanic shop.

Q Do you recall speaking to him before lunch time on the 21st of May?

A I must have spoke to him. I speak to him every day.

Q Do you recall any specific conversation you may have had with him?

A No.

Q When did you first find out about a union organizer?

A Sent us a letter; heard they are suing us.

Q You knew nothing before that?

A Not that we had any union.

I remember him saying that he was a union member when he worked someplace before. That was quite a while, though, because he had worked as a service writer prior to that.

Then he had some problems and he left us, and he came back, and he was around.

And I don't know exactly how it come about, but I put him on because he wasn't sure what he wanted to do anyway. This is what he told me at the time. And I felt at that time, well, he was a qualified man.

Q Where?

A Not in the same position now, you know, because I had this other fellow in the meantime had taken his job.

Q On the 21st of May, where were you when your brother advised you that Mr. Thomas wanted to leave early?

A I am pretty sure I was in the body shop.

Q Now, had you already told your brother that that would be Thomas' last day?

A Well, he knew it.

JUDGE FRIEDMAN: Answer the question, sir.

A Yes.

Q When had you advised him of that.

A He knew when we were talking and discussing it, my brother, he knew that.

Q That the 21st would be his last day?

A Yes.

Q When did you determine that you would let him go on the 21st?

A When we had a meeting -- we had discussed really how we were going to let the guys off.

And I was thinking of holding them off until Friday the prior week, but then I held them off until Monday because I am pretty sure there was some work I wanted to finish up that prior Friday.

Q He was let go on a Wednesday?

A If it was a Wednesday, whatever it was.

Q So, did you have a fixed date?

A In other words, I -- wasn't really -- What we were going to do, I was just holding him until I tried to catch up some of my work.

That day I was going to let him go. I know that positively, because I had in my mind to tell him, and also to tell the fellow --

Q On that Wednesday?

A -- that I was wanting to let them go, yes.

Q So, before Wednesday you hadn't made up your mind precisely which date you would let them go?

A Well, I was going to let him go that week as soon as I caught up with the jobs. If it was one day more or less, it was up to me.

Q When your brother reported to you that he wanted to leave early, what did you tell him?

A I said, "Well, I was thinking of letting him go today. Let him go now because he is going to be off the afternoon. Why have the guy come back tomorrow and then tell him tomorrow? That is not being right to the guy."

Q What did your brother tell you that Thomas had said to him?

A That he was going to take the afternoon off.

Q You weren't there when your brother first spoke to Thomas?

A About taking the time off? I was around in the body shop at that time.

Q When did you first speak to Thomas about the layoff?

A When I left the body shop and went to the office, I got his pay, which was a half a block away, on the way back to the mechanical shop, which is a block away.

Q What did you say to him when you gave him his check?

A I said, "We're going to let you go, and we've -- laying a few fellows off, you know. We let the other two fellows off."

And, before I could finish, he said, "For what reasons?"

I said, "It's been an economy move."

He said, "For what?"

I said, "An economy move; I have to let the fellows go." I said, "I don't -- But I have to cut back, and I'm sorry."

Q So, you let four people go.

What was Rudy's salary?

A What was their salary? Must have been about 250, something like that.

Q And do you know what Sisto's salary was?

A Sisto, I think he got $4 an hour, if I remember right.

Q And Jimenez?

A Jimenez, I think, was a little less.

Q Following the layoff of these employees, did your overtime for the other employees increase?

A We cut down the overtime, sir.

Q You cut down the overtime?

A There is no overtime at all now.

MR. WEINRICH: No further questions.

A I usually go to the service department around 9:30

REDIRECT EXAMINATION

Q (By Mr. McGlynn) Mr. Kiely, the meeting to which you referred to, is this one of amongst usually about four meetings a week?

A Yes, like a meeting, semi-meeting, or whatever. Every night almost.

Q There are three locations, one at 55th and Northern Boulevard, which is a service center?

A Right.

MR. WEINRICH: Your Honor, do I get to cross-examine counsel when he finishes?

MR. WEINRICH: On a simple matter like this, Judge, I am just giving the location of the premises.

Q Okay.

Where is the new car showroom located?

A At 57th and Northern Boulevard on the corner.

Q Where is the body shop?

A That is 32-49 57th.

Q What is the difference between the body shop and new car installation?

A Not quite a half block.

Q And then there is how much distance between the service center and new car and used car area?

A That is one block.

Q So that when -- which one closes up first, or which

they worked side by side with him.

A Well, the body shop and service department close same time.

Q And what time do they close?

A 5:00 o'clock.

Q And is the new car and used car section still open?

A They are open until 9:00.

Q Is that when you normally meet together, the three brothers; is that correct?

A Yes.

Q So, if I say that you had meetings usually at least three and most times four times a week; is that proper and true?

A I would say every night almost.

When we close up, we discuss the day, usually a little bit what is going on, because we have the money bag, me and John, whatever the receipts are; and all the time there are two of us together.

Q Right.

A All the time.

Q All right.

Now, the meeting that you had regarding these employees -- First employees were laid off May 16; correct?

A Yes.

Q And you know, of your own knowledge -- Did you see

Mr. Shea when he was there in his monthly visit?

A I saw him in the day; I am pretty sure I must have seen him there in the day.

Q Your conversation then with Tom and John took place, I should say, subsequent to the time that you saw Mr. Shea in May?

A Well, when I speak to them it's always after 5:00 o'clock.

Q I mean your meeting regarding the dismissal of the employees took place after Mr. Shea was there at night?

A Oh, yes. It was -- John that was telling me things were bad.

Q Now, also Rudy -- now, Rudy you considered in management; is that correct?

A Yes, he was --

Q What date did you give Rudy his notice that he would have to leave?

A I am pretty sure it's the same day that I told Thomas.

Q On or about that same day?

A To make arrangements, because I wanted to ask him to make sure he does the warranties.

Q And he stayed over extra time beyond to do?

A To make sure -- in fact, he came back the following week and asked me if I needed any help.

MR. McGLYNN: I have no further questions.

since 1966.

RECROSS-EXAMINATION

Q (By Mr. Weinrich) When Rudy stayed over this extra time, he was being paid for it, wasn't he?

A Sure.

MR. WEINRICH: I have no further questions.

JUDGE FRIEDMAN: You may step down.

(Witness excused.)

MR. McGLYNN: Thomas.

Whereupon,

THOMAS KIELY

was called as a witness by the Respondent and, having been previously duly sworn, testified further as follows:

JUDGE FRIEDMAN: You are still under oath, Mr. Kiely. Do you want this gentleman here?

MR. McGLYNN: Well, may I speak to Tom a second?

JUDGE FRIEDMAN: Sure.

MR. McGLYNN: This is off the record.

Disregarding how he gets back --

THE WITNESS: Why don't we let Jimmy wait a little while and see how it goes? We would like -- Otherwise, we'll have to battle the subway.

MR. McGLYNN: Thomas Kiely -- I will try not to be repetitious concerning material that Mr. Weinrich already went over, because I think we sort of covered that in relationship with employees we let go in detail.

JUDGE FRIEDMAN: All right.

MR. McGLYNN: In fact, if the Court wishes, or Mr. Weinrich wishes, I have a schedule with the names, and we can photostat it, which were taken from the record, of the names of people who were hired and let go, including Mr. Thomas.

JUDGE FRIEDMAN: You can put that --

MR. McGLYNN: I only have one copy.

JUDGE FRIEDMAN: You can introduce it and withdraw it if it's material.

DIRECT EXAMINATION

Q (By Mr. McGlynn) What is your capacity with Kimi Sales?

A General manager.

Q You also have an official legal title?

A Secretary.

Q Would it be fair to say that, generally speaking, you are the one that makes the final decisions?

A Yes. I am general manager, so most final decisions are usually made by me.

Q And, through your brother, I brought out the fact there are three different locations.

A Yes.

Q Your brother stays mostly with the body shop and --

A John stays in the service department continuously,

and -- well, that is because -- well, it doesn't matter.

And Jimmy goes between both places, the body shop and the service.

Q Now, again, sir, I am not leading if I think I am getting into something material.

You heard Jimmy talk about meetings.

How many times do you meet per week?

A Well, they have to actually come around to see me, so we actually have a discussion every night, because I am in the office, which is in the showroom. So, they have to come in and turn in receipts and so forth, so we always have a conversation, a few minutes or an hour or whatever it may be every night practically, Monday to Thursday.

Q In other words, all the money is turned in there and everything else?

A Right. I collect all the receipts and all and collect whatever has to be put away.

Q Prior to turning in the --

A Summaries are brought in and so forth.

Q Now, you heard Mr. Shea testify.

And I assume, probably off the top of your head -- At the end of four months, what, as of April 30, '75, what was the accumulated loss in the service department?

A Approximately, I believe, somewhere around $28,000.

Q If I gave a figure of 28,972 off the exhibit in evi-

dence, would that sound about right?

A It sounds fairly close.

Q Do you remember the date that you had this discussion with Mr. Shea?

A I believe it was around the 12th or maybe the 13th, because he usually comes in either day, depends on how it falls in the week period.

Q He comes in every month about that time?

A The statement has to be in the mail prior to the Fiat and Datsun -- and to the bank, because these statements -- also copies of these go directly to our bank, because of our floor plan, so they have to be in the mail by the 15th.

So, it's always somewhere around that part of the month, 12th or the 13th he is here, because we got to allow a day for the mail to get taken.

Q Concerning this loss in the service department, was there a discussion between yourself and Mr. Shea?

A Yes, we discussed it.

Q And what was the substance of the discussion?

A Well, we discussed that we have to do -- take measures in order to reduce the thing, to try to reduce the loss factor of some sort. And, being that it was such a large amount, we had to take some action.

When you are dealing with the service department, the

only course of action that can be taken, because we're buying labor and -- so, in order to do it, we have to reduce labor, because that is the only commodity we have in the service department.

Q Did you also eliminate overtime?

A As a result of that, we cut out all overtime.

Maybe the necessity for one -- we -- overtime was limited for the exception of maybe one or two hours for some men who move cars on a rainy night or something goes wrong, just get hung over and you got to spend an extra hour or something like that.

But, as far as mechanical work and working on cars after 5:00, we don't do that. Maybe ten, fifteen minutes or something like that, but not --

MR. WEINRICH: Could I have a minute, Your Honor?

JUDGE FRIEDMAN: Proceed, please.

Q (By Mr. McGlynn) Mr. Kiely, after your meeting with Mr. Shea -- Now, he uses one of -- what, your offices when he is there; or which office does he use?

A Office in the showroom where our books of record are kept. He works there because everything is there.

Q After your meeting with Mr. Shea, did you subsequently have a meeting with both of your brothers?

A I had a meeting with them.

And the following night I explained them we're going

to have to do something to reduce the labor cost, our expenses, which is the labor.

Q And was -- your brother indicated -- you wanted to let go of how many people?

A Well, I wanted to go -- naturally, you take the amount of people, and -- working, and you try to cut the thing into a point that is within reason. But I discussed it with them.

We didn't arrive at any decision that night.

We did the following night when we discussed it further, when they had more time to think the thing over.

It was a thing that had to be done within a short period of time, but still had a time to think. But it wasn't any decision that was made to the point spontaneous.

Q Let me ask you this:

Now, the precise date of letting go -- now, the employees that were let go, what were their job categories; in other words, class mechanics, or whatever it may be?

A Well, we had the service writer, and we had an A mechanic, a B mechanic, and a C mechanic.

And, in our discussion about that, was that we basically -- me more than Jimmy -- I said we will have to balance the load.

We don't want to overload ourselves with all helpers and have all top men, because we're trying to balance the

amount of money that we're trying to adjust to, so we have to keep it in some sort of a balance; not to take and let all the helpers go, keep all the top guys.

You know, what is the sense of getting rid of the Indians? You need them. And what is the sense of having all the chiefs? You don't need all the chiefs either.

You can't have an A mechanic doing a grease job. Doesn't make sense.

Q Your brother said that initially you wanted to let go six employees.

A That was our original discussion of what we had.

And naturally we were talking about it and arbitrated back and forth to come up with some sort of thing. So, you have to start at a basis.

Q And your basis was six, I take it?

A That was the original conception.

But, after arbitration, you come up with a finalized, sensible figure.

Q All right.

Now, I assume that -- well, who is in charge of picking the exact date that each of these four employees were to be let go?

A Well, as a base rule, what we usually is the end of the week, the pay week, is when we try to, if there is any termination, unless there is an extraordinary reason.

For instance, like one young fellow we had, he had improper credentials. He didn't have his proper credentials. Let him go immediately, no matter what time of day, because it was in violation -- in this instance, was in violation of immigration.

Q In other words, he didn't have permission to work?

A He didn't have permission.

But he showed us credentials that weren't proper in order.

Q On May 16 you testified that Hector Jimenez and Paul Sisto -- let me withdraw that.

There was some mention by the Complainant that you sort of said to him -- that you always said hello to him, but you sort of said to him, "What country did you come from?"

Could you explain what did that mean?

A Really means nothing. It happens to be one of my figures of speech that I use, because most of our employees are of foreign extract of some sort.

So, in joking, I say -- has no meaning really. It's just something I say, and has no meaning to anybody. It's just joking way of saying hello to somebody rather than say to the guy -- like you got a guy to India -- say, "Hey, you Indian."

Do you know what I mean?

Q Right.

Was that a greeting, or was that --

A Well, to me it's a greeting, and most people take it for that. And -- you know, they know I use it all the time so it doesn't make any insinuations about anything.

Q Now, we laid off, May 16, '75 and May 17, '75, Jimenez and Sisto.

Was there anything personal in laying off those particular men?

A Well, not as far as I was concerned. It was just the fact that they were evaluated as far as production, and basically -- I know Jimmy had the decision to make on that, not me.

To me, I am in the office. I can't go down and watch the workmanship of each man in the shop. That is far from what I can do. I have got enough to do from where I am.

Q Aside from the question of arriving at the four men, Jimmy was left up to choosing the men because he runs the service department; is that correct?

A Yes. He does the hiring. I don't get involved in the hiring. I get involved only in the management portion.

Q Was there any discussion with you regarding any of these four, ranging from Jimenez, the Complainant, to and including Rudy?

I would like to get Rudy's last name.

A Pabon.

Q Was there any discussion whatsoever regarding this Complainant --

A No.

Q -- or Petitioner?

A I had none. Just what Jimmy decided.

Q Was there any discussion whatsoever concerning any question of unionism of any --

A As far as unions go, I had no knowledge of anything until I got a letter from the Labor Board, and that is the first knowledge I had of anything whatsoever in this manner.

Q Let me ask you this:

You have been in the automobile business how many years?

A Twenty-five.

Q And on various occasions have there been discussions or remarks by employees over the years about unions or possibility of unions or something of that type?

A Yes, sure.

Q Have you ever fired anyone for that reason?

A Never.

Q Do you know clearly that it would be a violation of the law; do you not?

A Of course.

Q If the service department continued to operate where it showed a loss most of the -- just about $29,000 -- would your company survive, or would it have to go under water and dissolve.

A I would say it would be a very bad financial problem, or would have to have some sort of help, or do something in a drastic nature of some sort.

Q Was it the opinion of your accountant, and was it your opinion, that, if this continued, it would be gradually just accumulative?

A Well, he advises me what his knowledge of what the trend is.

Q Right.

A And, if we continue at that trend, we're going to be in, you know, default conditions; or it's either do something, take a drastic action and not pussyfoot about it, and try to do something to get your head above water.

Q Getting back, we covered Jimenez and Sisto and Mr. Thomas.

You had nothing to do pointedly with just selecting Mr. Thomas, did you?

A No.

Q You knew who he was but, amongst the names, he is just another name; is that true?

Not taking away from him. I don't mean it that way.

A I usually go to the service department around 9:30 every morning just to go through and check out the place and see what is going on, because you have to have review taken.

And the reason I go there at that time, because it's coffee break, so you get to be able to see more than just men working under the hoods.

You are supposed to know what you are managing, and what is going on, providing the managers -- even though if they are my brothers, they do something wrong, I got to rectify my job, I got to do my job.

Q How about Rudy Pabon? Are you familiar with the exact date that he got a notice that he would have to leave in about a week?

A Well, I know, being that I am in the office and what the story is, that he got a notice on the 21st, which is a week's notification, because he was a manager and part of management.

Q Right.

A We gave him a week's notice. And, as a result of that, he also was willing to work two extra days and clean up the warranty that had to be done.

Q Would it be fair for me to say that Rudy Pabon was on a very friendly basis with your brothers particularly?

A Yes. They hired him; I didn't hire him.

Q You would see him occasionally, but they were with him all day long.

A They worked side by side with him.

Q When it was necessary to go to court, did they send Pabon?

A Yes, on certain matters.

Q Getting back to the fact, wouldn't you consider him on a very friendly personal basis?

A Yes, he was friendly, and a manager. And he took the company's interest when he went to court or did anything for the company.

Q But, in view of the fact that the Indians -- A Indians, B Indian and C Indian mechanics that were being let go were being let go had less requisite, is that true, than a man that writes up and so forth?

A Fellow writes up and represents you is you. That is his job.

So, naturally, you got to have a feeling when you turn your pocketbook over to somebody to run your business. And basically he is running your business when he is writing up, because he is making up bills. He is --

MR. WEINRICH: Move to strike as not responsive to the question.

Question dealt with whether, when you got rid of an Indian, B Indian and C Indian, you also have to get rid

... and I don't know how responsible Mr. Pabon was or wasn't.

JUDGE FRIEDMAN: Overruled.

Go ahead.

Q In other words, were you aware of the fact too that Mr. Pabon indicated that he was probably going to leave in the near future because he was going into his own business?

A I had no knowledge of that.

Q In any event, what I am getting at, your brother picked him for whatever reasons he may have had.

You heard him testify that Mr. Pabon said he was going to go into his own business, did you --

A Well --

Q May I finish?

A Yes.

Q Whatever reason it may be, your brother selected him?

A Right.

Q Even though he was on a friendly personal basis with him?

A Yes.

MR. McGLYNN: I have no further questions.

CROSS-EXAMINATION

Q (By Mr. Weinrich) How long have you been general manager, Mr. Kiely?

your people would be?

A Of Kimi Sales?

Q That's correct.

A Since 1966.

Q And, as general manager, you are the chief operating officer; is that correct?

A I am the chief operating officer.

Q Now, you sit down with Mr. Shea on a monthly basis, and after he has finished preparing the dealer financial statement you discuss it with him?

A We discuss the statement, and we also discuss the prior month's statement, which we get a runoff sheet from the factory as to the composite runoff as to what the averages are of the other dealers in the area, which gives you a guideline to follow as to whether you are up or down in the area.

Q That --

A It's just a projection that you can get to help further what you are doing.

Q So, that composite would enable you to compare your operation to other similar operations?

A Gives you a similar -- but it's only on prior work done, nothing to project in the front.

It's work that has been -- your month, your prior month has been -- to see whether you were off on that month or not.

Q Has your service department suffered a loss prior to the first four months of 1975?

A We have a loss, yes.

Q Had it had a loss before that?

A Yes, we have a loss in the service. You have a constant normal loss in the service department, in any service department. But it depends on the amount that you have.

Q So, is it correct the service department in your dealership constantly or always loses money, and the problem becomes how much money --

A That is the problem.

Q -- it's losing?

A It's the same as where you have profit and how little profit it is. Just a reverse situation in the service department.

Q So, you have never had your service department make a profit?

A Not in the solvent situation, no.

No service department runs in a solvent situation.

Q Why is that?

A Well, basically the first major cause of that is warranty, warranty claims.

You have a customer aggregate that you charge a customer on, arbitrary figure of, say, $18 an hour. The factory will pay you on labor rate on warranty work $12 an hour.

So, you have a loss factor from the start.

So, the lower the warranty claims you can get, the higher your profit structure becomes in the service department. And the more warranty work you do goes in a sliding scale the opposite way.

Q Let me ask you, when you compute your service department profits and losses, do parts sold and put in by your service department count towards that?

A No, that is a parts department function, because they stock the parts, handle the parts, and they only hand them to the mechanics to put in the car.

It's not a profit structure to the service department. Parts department is individual.

Each department you have runs individually.

Q So, your major problem in the service department is the warranty work?

A Warranty is your largest problem you have.

Q And that is because the automobile manufacturer will not pay the dealership as much for the labor consumed in warranty work as the dealership would charge its customer if it was doing the work alone?

A That's correct.

So, you are working a definite short end of the deal on every car you fix.

Q Now, Mr. Shea testified that he advised you to space

out your warranty work.

Q Now, Mr. Shea testified that he advised you to space out your warranty work.

A Yes.

Q Now, if you spaced out your warranty work, would you not still be doing the same amount of work but over a longer period of time?

A Not necessarily, because in spacing out the work, what happens is the warranty work that you have will find itself the original source that it comes from.

Such as, we'll service and warranty a car that we sell. We also will service and warranty a car that we don't sell. But we space out the work that we don't sell.

Now, I don't know if that is clear.

What I mean by that is that, if you buy a car from XY dealer in Brooklyn and he is within a 50-mile radius, and he comes to you for warranty work which should have been done by the dealer originally, you tell him, "Go back to the original dealer," rather than take it, even though they will pay us if we do it.

You space out the work by telling him, go back to his dealer.

Q While refusing certain warranty work?

A Not refusing, but spacing.

Instead of taking on all warranty work at $12 rate,

you take your customer rate at $18, and then you have no warranty to take a customer on that don't belong to you at the start.

That is what he means by spacing out the work; because the same mechanic works on the car, because customer rate or warranty work takes the same amount of time to do the job, so you are in deficit to do the job.

And, if it's not yours, many times the factory will not pay you for the work you do. Even though you have done the work, they can reject it, claiming that it's part of predelivery; new car predelivery, that is.

Q Now, you testified that the only way, or the only expense that could be cut down in the service department were salaries; is that correct?

A Salaries.

Q Now, isn't it also correct that there are other expenses in the service department besides salaries?

A Oh, sure.

The are fixed, most of them are fixed expenses.

Q Well, what would be an example of a fixed expense?

A Rental.

Q What does rental represent?

A The floor space that the service department occupies, and you have a lease on.

Q You are leasing your premises?

for identification.

A We lease the premises, yes.

Q And you apportion the rent between the various departments based upon floor space?

A That's correct.

Your lighting and phone bill fluctuates, but it remains on fairly constant expense.

Q Your lighting and phone bills, they would be your semi-fixed expenses?

A So to speak, yes.

Q But you could introduce certain economy measures in that area as well.

A Like we did. We put locks on all the phones.

Q Cut down on the postage?

A Postage.

Q Now, as far as salaries are concerned, isn't it correct that part of your salary as the general manager is carried as an expense in the service department?

A That's correct.

Q Now, according to Respondent's Exhibit 2, for the period January through the end of April 1975, there were five supervisors or management-type personnel besides from owners being paid from the service department.

Would you know who they were?

A Paid from the service department?

Q Yes.

A I can't answer that. I would have to check and see.

Q Are there any clerical employees employed in the service department?

A Yes. We have a cashier and we have bookkeepers that do the work, that do the daily summaries, accounts receivable and accounts payable.

They may be charged -- which they could be charged in there.

Then we have our bookkeeper and office manager, which part of their work comes in there too, which are all analyzed out and divided into each department.

Q Are you familiar with the dealer financial statement, Respondent's Exhibit 2?

A Quite a bit, yes.

Q Let me show you page 3 of that statement.

And, looking at the items on page 2 and 3 dealing with salaries, where it says item 23, "other salaries and wages," would those be the figures for all of the mechanics and other helpers?

A Yes, those would be the figures for the -- let's see.

Here we have salaries, supervisors. Now, that is the managers in here.

Q Right.

This is the clerical, right?

Q Right.

A This is the owners' salary, and this is the other mechanics.

Q So, the column 23 would be a figure of $1674, would be the salary for all of the mechanics in the department for that month?

A Well, let me look at that again. I don't know if that is exactly the total salary.

That should be the figure.

It seems small to me, unless there is an error in it, but that should -- according to this statement.

Q And that would be the figure that you sought to reduce?

A We tried to reduce it, yes.

Q So, even if you eliminated all of your employees in the service department, you could have only reduced your figures by approximately $6400 for the four-month period?

A Can I see that statement again?

Q Sure.

A Just to be --

Q I just give you this, you can use it to look across.

MR. McGLYNN: While Mr. Kiely is looking, sir, on this examination, I take it this examination should have been had of Mr. Shea, who has already been on the stand.

You are asking a layman to interpret what an accountant has done.

And it's obvious to me that the salaries in that place, as you well know it, are far in excess.

If there are eleven mechanics alone who are averaging out somewhere around $200 a week plus the management salaries, that figure cannot pertain to that.

That is just being ludicrous, taking advantage of something that shouldn't be done.

MR. WEINRICH: Then I move, since Mr. Shea has testified --

MR. McGLYNN: You should have asked Mr. Shea.

MR. WEINRICH: Let me finish, counsel. I let you finish.

Mr. Shea had testified that he had taken the figures he testified from that statement. And, if you are now saying that that statement is obviously incorrect --

MR. McGLYNN: No, I am not saying that.

You are not an accountant either. You don't know.

THE WITNESS: Wait a minute here.

JUDGE FRIEDMAN: Wait, Mr. Kiely.

THE WITNESS: No, I --

JUDGE FRIEDMAN: Please.

THE WITNESS: I can tell you this --

JUDGE FRIEDMAN: I think that what actually happened here is that this General Counsel has asked this Respondent, number one, whether he is familiar with the statements; and

he says yes, very familiar with them, or some words to that effect.

Now he is asking him to -- the meaning of the statement. The familiarity would naturally mean he would know something about what the statement meant.

MR. McGLYNN: Well, sir, respectfully, it's clearly indicated that the accountant goes to the books of the firm, and he puts these figures on the statement.

JUDGE FRIEDMAN: Definitely.

MR. McGLYNN: All right.

Mr. Kiely is familiar with that statement to the extent that I am. I looked at it, and there is numbers on it. That is --

JUDGE FRIEDMAN: I think he knows more than that. I would have to assume that he would know more than that as a general manager of the place. He would know more than just the figures that the accountant put on them.

He would know where the figures come from, how they are assembled, , what they will mean.

MR. McGLYNN: The idea is they are assembled from the books by the accountant.

And he was on the stand. You can ask him anything.

But I don't think it's fair to ask a layman what the accountant has done. I don't understand it myself.

JUDGE FRIEDMAN: That may be true, you are not fa-

miliar with the business as this man is. You are not the manager of the business.

MR. McGLYNN: No, sir, but I also know he has an accountant that does this.

JUDGE FRIEDMAN: I am aware of that, and I am aware that any answers he gives have to be taken in light of the fact that he is not an accountant.

MR. McGLYNN: I think this should have been asked of an accountant.

JUDGE FRIEDMAN: I am going to permit the answer, and maybe he can clear it up.

Q (By Mr. Weinrich) Can you clear it up, Mr. Kiely?

A Not exactly. I -- If I had my -- no, I can't take it off this either.

I am sure the -- whether this figure is right or not, I can't answer without having my payroll record, I could tell you exactly what the payroll is. I need the payroll record.

JUDGE FRIEDMAN: Where is that summary sheet?

THE WITNESS: I only have my 941 forms, but that doesn't break it out.

JUDGE FRIEDMAN: I think the summary sheet might give him an assist on that.

If you can't figure it out, Mr. Kiely, just say so.

THE WITNESS: No, I can't figure it out.

JUDGE FRIEDMAN: Well, that is the end of that line of questioning.

Go ahead.

THE WITNESS: Here are your other papers.

Q (By Mr. Weinrich) Now, your meeting with Mr. Shea, would you tell us what Mr. Shea said to you after completing the record, what did he say to you in that conversation and what did you say to him?

A Well, the conversation went in the way the service department has got a tremendous loss consistently and, if we don't take and reverse it, and based on the other departments, we're going to be in a very bad situation.

And the next question after that was which way can we eliminate, trying to reduce the losses in that department and try to do it.

Naturally, we discussed that, and we have to come up with some solution.

Q When you say you discussed that, I am interested in your discussion.

A We discussed the fact, what ways we can do it.

And he mentioned to me about the warranty stuff.

I said, "Well, the only other way that I can see to do it is reduce the work force and, by reducing the work force, we would reduce everything by readjustment."

A So, it was your suggestion to reduce the work force?

A Basically, yes.

Q Had you been doing a lot of warranty work at that time that you weren't required to do?

A Yes.

Q And, by not being required to do, that was work that you could refer and go to another dealer, cars that you hadn't sold and there was a dealer within a 50-mile radius that had sold the cars?

A That's correct.

Q And, by doing that, you allow yourself more room to take on more profitable work?

A Well, we do a volume of work which is more profitable.

Q So, you had two methods on which to reduce your losses in the service department: A, to do something about the warranty situation, and, B, eliminate some personnel.

A That is the only two points that we could arrive at to start some place to reduce it.

Q Had you had a similar discussion in April with Mr. Shea?

A Well, we had a discussion, but we didn't discuss anything about reducing the force or that we just discussed that we had a loss and we had to do something, but we weren't -- at that time we didn't take the position that we had to do something immediately or we were going to have a problem.

BEST COPY AVAILABLE

Q About two months before roughly?

Q Now, after that, you met with your brother?

A Two brothers, yes.

Q Jim and John?

A Yes.

Q And was your statement to Jim you just thought he has to get rid of people; pick them?

A Well, we discussed -- I said we had to do something. He wasn't -- naturally, he, running the department, he doesn't like to reduce the department.

But I said to him we have to do something, and we have to get started to do it and do it as quickly as we can or else we're going to be in a bind before the next month is out. We're already in the month already.

Q You were almost half through with the month at that time.

Q Yes, we were in the month already.

Q When did your first conversation with your brother take place?

A Probably was around the 12th or the 13th. I am not positive of the date on that.

Q And when was the -- when was it determined that four people would be let go?

A Well, I discussed that with him, and probably about three, four days later, towards the end of the week it was.

Q And you reached a firm figure of four people?

A Yes.

Q You did not enter into any decision as to who the four people would be?

A I told him to do it. He hires and fires them, so it didn't make any difference to me.

Q Well, did you tell --

A Because I am not supervising them to know what their qualifications are, what they are producing, what they are not producing.

So, it would be left up to him, because he is the man that is there every day with them.

Q You didn't instruct them to do it in accordance with seniority or anything else?

A Not in any full --

Q But did you tell him to do it across the board, get rid of one from each category?

A Well, we had discussed it and we felt that was the best way to do it, for the company, rather than take a lopsided affair.

Q When were you advised that Mr. Thomas was selected to be laid off?

A Sometime -- would be sometime before the 16th, maybe the 15th or something like that.

They were all determined before they were laid off.

Q Sometime before the 16th you were advised that Thomas

would be laid off?

Were you told when he would be laid off, or was that left in the hands of your brother?

A That was left in his hands, because he had to determine what workload he had and what he was going to do with it.

Q So, you laid off four people.

MR. WEINRICH: Didn't we put in that list of comings and goings?

MR. McGLYNN: It's right here. You want a copy, don't you (handing document to Mr. Weinrich)?

Mr. Weinrich, would you like to identify it?

That is an abstract from the Employer's record. That was brought in today to save time.

Q (By Mr. Weinrich) Now, the four people are laid off. By the time the service writer or service advisor is gone, it's the end of May, it's May 28th --

A Right

Q -- 1975.

Do you recall what your Mr. Shea -- what your operating loss figure in the service department was for May?

A I don't have that.

Q Now, do you recall what it was in June or July or any month subsequent?

A I didn't bring those figures with me.

Q Now, in June you lose another A mechanic, Pacheco.

A Yes, the end of June.

Q The end of June.

You would initially determine that you would lay off one employee from each category, an A, B, C mechanic and a service writer.

What had occurred -- Did anything occur between the end of May and the end of June to make you deviate from that plan by not replacing the A mechanic?

MR. McGLYNN: Objection, Your Honor.

This is after the fact.

A Which A mechanic are you referring to?

Q Pacheco.

A Well, he left the end of June.

JUDGE FRIEDMAN: Wait. There has been an objection.

You say this was after the fact?

MR. McGLYNN: In other words, the allegation is that, on May 21, Mr. Thomas was wrongfully removed from his employment.

JUDGE FRIEDMAN: And since they refused, and they failed -- refused to reinstate him --

MR. McGLYNN: They didn't hire a mechanic.

It refutes their own position. What makes them change?

He didn't indicate that they would never hire another mechanic. He indicated they had to cut the payroll to

save the business.

I don't understand the question. I will object to the form of the question, then, what made him change his position concerning replacing Pacheco. We never had one in the first place.

I object to the form of the question.

THE REPORTER: May I have a short recess?

JUDGE FRIEDMAN: Sure.

(Recess taken.)

JUDGE FRIEDMAN: On the record.

I am going to sustain the objection on the basis that there has been no testimony to the effect that there was a change.

MR. WEINRICH: Well, the witness has testified that shortly after May 12 it was decided that they would eliminate one mechanic in each category, including the service advisor, so that -- plus the service advisor, and that they did that because they wanted to not be shorthanded on one end of the stick and overstaffed on the other end of the stick.

JUDGE FRIEDMAN: Right.

MR. WEINRICH: There is also evidence that, as of June 25, 1975, another A mechanic left of his own accord.

JUDGE FRIEDMAN: Yes.

MR. McGLYNN: And there is also testimony, sir --

THE WITNESS: Yes.

depending on my own recollection, that there was testimony that they took a man -- I -- whatever it was -- Anderson out of the pit and put him on the floor. I don't know who testified to that.

Is there a man named Anderson?

THE WITNESS: Yes.

MR. McGLYNN: The defendant -- I remember the exact language: by taking something and somebody -- and I believe it was Anderson -- out of the pit.

JUDGE FRIEDMAN: Okay. I sustained it.

But you can get around it, I am sure.

Ask him was there a change.

Q (By Mr. Weinrich) Was Mr. Pacheco replaced?

A No, he wasn't.

Q So, as of June 25, 1975, you had lost two A mechanics, a B mechanic and a C mechanic?

A Correct.

Q Following that, is it also correct that you replaced only -- you hired two new mechanics, one of which has left since being hired?

MR. McGLYNN: May I see the list?

MR. WEINRICH: Yes, sure. Let me show you this list, which I will have marked as General Counsel's Exhibit 3 for identification.

MR. McGLYNN: I submitted it. I don't want to.

MR. WEINRICH: Then mark it as Respondent's Exhibit 3 for identification.

MR. McGLYNN: Right. I offered it before.

JUDGE FRIEDMAN: I have no record that it was offered before.

MR. McGLYNN: I offered it before, but didn't make a formal offer.

JUDGE FRIEDMAN: All right.

This is the summary of hires and fires?

MR. McGLYNN: Yes.

JUDGE FRIEDMAN: Or leavings?

MR. McGLYNN: As extracted from the employees' records, which we have physically in the Court.

JUDGE FRIEDMAN: Right.

(Document above referred to marked Respondent's Exhibit No. 3 for identification.)

Q (By Mr. Weinrich) I show you Respondent's Exhibit 3 marked for identification.

Now, following the termination -- or the resignation, rather, of Mr. Pacheco, how many mechanics were hired?

A Hired? We hired Parttap, Leo. Those were the -- Wait a minute now. I want to make sure.

I'm sorry. Alfaro was the first one we hired. That was the only mechanic we hired. He was a B mechanic.

Q Alfaro on 8/20/75?

A 8/20.

He was terminated 9/20/75.

Q And following that, you hired?

A A C mechanic, two -- one C mechanic and one helper.

Q That isn't totally correct. I think I am confusing you.

But the helper you referred to was hired on 8/13/75?

A Yes.

Q And the other mechanic was hired on 9/9/75?

A Right.

Q Now, the mechanic -- but you never hired another A mechanic?

A No.

I can explain -- What Mr. McGlynn was trying to get at from my testimony before, Anderson, who was an A mechanic, which does basically, in the pit, wheel alignment and frame work.

Q You moved him over?

A He moved him over as a partial pinch-hitter, half the time on the floor and half the time to do wheel alignment. And he is still doing that now.

Q There was no problem with Mr. Thomas' work, was there?

A As far as I know, there was none.

Q And the only reason for his termination, according to your testimony, is that it was an economic measure?

A As far as I am concerned, yes.

MR. McGLYNN: Well, Your Honor, he testified that his brother Jim was the one to select the particular people involved.

JUDGE FRIEDMAN: All right.

MR. McGLYNN: And his brother Jim testified that, when the Complainant came to him, he didn't hire him as a service writer again because the gentleman, Mr. Thomas, was making up his mind more or less as to what he was going to do in the future.

Now, that is my recollection.

JUDGE FRIEDMAN: That is my recollection of the record, but I don't know whether we have anything in the record exactly why Mr. Thomas was chosen as one of those to be laid off.

MR. McGLYNN: As I recall Mr. James Kiely's testimony, it wasn't that he didn't hire him again as a service writer, and he seemed to infer that the reason was that Mr. Thomas didn't know what he was going to do exactly in the future, but it was not Mr. Thomas Kiely's prerogative at that time.

JUDGE FRIEDMAN: Mr. Thomas said he left it up to James to make the selection.

Q (By Mr. Friedman) So, you have no knowledge as to why Mr. Thomas was selected?

A I didn't question my brother as to what the reason; he used his own thinking to select who he felt -- you know, we discussed the ones he was leaving in. He felt that they were the best, the reason why I went along with his decision.

Q The best to leave?

A Yes.

Now, he felt his exact basis of selection. I can't say why his mind --

Q Did he tell you why he selected Mr. Thomas?

A Not that I can remember.

All I know was -- I really can't give you a full answer on that.

Q So, to your knowledge, then, you know of no reason why, if a position was to become open for an A mechanic, Mr. Thomas would not be rehired?

MR. McGLYNN: Objection.

It's merely -- it's subjective. It calls for the operation of the witness' mind. His brother has to do with hiring and firing.

JUDGE FRIEDMAN: I will sustain the objection.

MR. WEINRICH: I have no further questions of the witness.

What I would like to do, and I ask the permission of counsel and of the Administrative Law Judge, is that

possibly I may have overlooked something.

And, since Mr. Jim Kiely is still in the room, I would like to ask if I could recall him for the limited purposes of asking him why Mr. Thomas was selected.

JUDGE FRIEDMAN: Yes. But before --

MR. McGLYNN: I submit -- All right.

JUDGE FRIEDMAN: Before we get on that, I would like to ask the witness one question.

Did you discuss the classification of employees?

Did you decide between the classes of employee to be discharged; in other words, the A, the B, the C?

THE WITNESS: Yes.

I testified to that, I believe I did, that we decided in our meetings we had to carry a balanced load of the payment.

JUDGE FRIEDMAN: That's right. I m sorry. You are right.

THE WITNESS: And we would let off one of each category in order to do it.

JUDGE FRIEDMAN: All right.

Thank you. That is all.

(Witness excused.)

JUDGE FRIEDMAN: All right, what is -- do you say --

MR. McGLYNN: I was going to say that I believe it's improper recross of a witness, because the cross has already

been closed.

If I may, I will discuss the matter with my client.

I really feel, technically, I have a complete objection to it because it would be, as Mr. Weinrich and I discussed before the hearing, that it's run by full technical rules of law and not so loosely as an administrative proceeding.

So, technically, I am.

If Your Honor will let me, I will confer with my clients for a moment.

JUDGE FRIEDMAN: All right.

(Discussion off the record.)

JUDGE FRIEDMAN: Back on the record.

MR. McGLYNN: At this time I withdraw my previous objection and ask that the Court need not rule on it.

JUDGE FRIEDMAN: All right.

Mr. Kiely, do you want to come up here, please?

MR. WEINRICH: Thank you, counsel.

JUDGE FRIEDMAN: I would have had to rule?

MR. McGLYNN: Why?

JUDGE FRIEDMAN: Off the record

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

I want to thank you for your consideration.

MR. McGLYNN: Yes, sir.

But also Mr. Weinrich has been very decent in all respects, so I --

Whereupon,

JAMES KIELY

was recalled as a witness by the Respondent and, having previously been duly sworn, testified further as follows:

FURTHER CROSS-EXAMINATION

Q (By Mr. Weinrich) Mr. Kiely, you testified previously that it was decided that you would lay off people from each classification, an A mechanic, a B mechanic, a C mechanic, and a service writer; is that correct?

A That's right.

Q In selecting the A mechanic to be laid off, what was your criteria?

A Well, the reason I felt that Thomas was the one to go is, when he was hired, he wasn't sure what he was going to do.

And, if I am going to lay off people, I want somebody I feel is going to stay. And at the time I felt that he was the one that most likely I should let go. Otherwise, I might get in a bind and be short again.

Q What did he say to you when he was hired?

This is when he was rehired, I take it.

A He had been working for me -- I'd better tell you how it went.

Q Right.

A He had been working for me as the service writer during the warranties. He had left, and he was going to go out West to get into business, I believe, with his son.

Then he came back, and he had -- When I saw him, he had been back and had worked in another place.

Then he had come back down to me. He had left that place. I don't know what the reason. And he had discussed that he had a few problems at home and he wasn't sure what he was going to do, and this and that.

And I said, "Well, if you want, you can come back here, but I couldn't put you back in that other job because I have hired somebody for it. And you could give me a hand for a while. I mean, you are capable."

And that was really the basis that he was rehired.

Now, when I was thinking of who to select to let go, naturally he was -- I think he was the last man -- having that in mind, I felt that here is a man I am not sure that will stay one way or the other, so I felt that he would be the best selection.

MR. WEINRICH: I have nothing further.

MR. McGLYNN: Just verify one thing from this.

JUDGE FRIEDMAN: Go ahead.

FURTHER REDIRECT EXAMINATION

Q (By Mr. McGlynn) Mr. Thomas was rehired about March

24, 1975, according to the schedule.

A I am not sure what day.

Q About two months before roughly?

A About that.

Q Is that about right?

A I think so.

Q So, he was only there about two months before the time that you released him; is that right?

A Yes.

MR. McGLYNN: All right, Mr. Kiely.

Unless Your Honor -- I'm sorry.

JUDGE FRIEDMAN: No, I have -- Thank you, Mr. Kiely.

(Witness excused.)

JUDGE FRIEDMAN: Any rebuttal?

Is that your last witness?

MR. McGLYNN: Yes, sir. I'm sorry.

JUDGE FRIEDMAN: You rest at this point?

MR. McGLYNN: Yes, the Respondent rests.

JUDGE FRIEDMAN: Any rebuttal?

MR. WEINRICH: Yes.

General Counsel calls James Thomas.

Whereupon,

JAMES THOMAS

was recalled as a witness by the General Counsel and, having been previously duly sworn, testified further as follows:

JUDGE FRIEDMAN: You are still under oath, Mr. Thomas.

THE WITNESS: Yes.

DIRECT EXAMINATION

Q (By Mr. Weinrich) Mr. Thomas, calling your attention to the time of your rehire by Kimi Sales, could you relate to us, if you recall it, the conversation you had with Mr. James Kiely?

A Mr. Kiely --

MR. McGLYNN: Objection, Your Honor.

This comes under the heading of improper redirect examination. This was explored in the initial examination.

And now I intend to be technical.

JUDGE FRIEDMAN: No, I don't think so.

I believe that he said that he was rehired, he was told that the other job was filled, and -- I don't think he went into these details, or he was even asked this.

I think it's proper rebuttal.

MR. McGLYNN: May I have an exception, sir?

JUDGE FRIEDMAN: Sure.

Overruled.

A I was told by -- I asked Jim Kiely if he needed any work.

He asked me why.

I said I worked sports car salon, and I found difficulty up there. I couldn't operate the shop that they had

And he asked me how was everything at home.

I said everything was fine. I had been divorced from my wife in the past year, she had a sickness problem, and that I was looking for other work.

And he said, "I would like to have you."

And I said, "I will take what I had before."

And he mentioned that he had to hire another man in my place, and he told me to report to work that following Monday.

Q Do you recall if there was any mention on the part of the company of it being a temporary job?

A No. As far as I understood, it was a permanent job. Didn't say anything about --

MR. McGLYNN: Objection.

Again, that is the operation of his mind.

We can hire and fire people as we choose. No such thing as a permanent job. And that is the operation of his mind.

JUDGE FRIEDMAN: I will strike out the part of what he thought it was, yes.

Q (By Mr. Weimrich) Did you say anything about the job being temporary on your part?

A No.

Q During the period of time that you were employed with

the company from March until May, had you been advised by any members of management that they were instituting any economic reforms?

A No.

MR. McGLYNN: Objection.

It's a statement -- or a question not in keeping with the facts, Your Honor. The only indication was, when he was given his final check, he was told that he was being released for economic reasons. No claim on --

JUDGE FRIEDMAN: That he was told before about it?

MR. McGLYNN: Yes. That is not management's position.

Q As an A mechanic, how much warranty work did you normally do?

A On the average of probably maybe one or two cars a day.

Q Was the work performed in the nature of warranty work different than non-warranty work?

A In the nature of work, no, not itself.

Q While you were employed by the company, did an individual named Anderson work there?

A Yes.

Q What type of work did he do?

A He worked on the front end.

JUDGE FRIEDMAN: Worked on what?

THE WITNESS: On the front end machine, most cons-

tantly on that.

Q To your knowledge, did he ever do any motor repair, electrical work, or transmission work?

A No, not to my knowledge, not until then.

Q During the period that you were service advisor, did he do any of that work?

A No. He was mostly always -- every time I saw he would be on the front end machine. He would do the wheel alignments or McPherson truck assembly shock stems on Datsuns.

Q Did anyone besides yourself do transmission work?

A Vittorio did.

MR. McGLYNN: Your Honor, I am going to make objection. This is going far afield of what is ruled rebuttal.

JUDGE FRIEDMAN: No, I think that there was testimony on the part of the Respondent's witness to the effect that they -- Mr. Thomas Kiely and Mr. James Kiely both testified that they were going to get along with less mechanics, and that they -- how they were going to do it.

And I think this is somewhat of an answer to that, questions along that line.

MR. McGLYNN: My recollection of his testimony is, after he left, there were three class A mechanics at that point, not counting Anderson.

JUDGE FRIEDMAN: That may be true, but I think the

question is proper.

Do you remember what the question was, sir?

THE WITNESS: Yes.

MR. WEINRICH: He had answered the question.

JUDGE FRIEDMAN: I'm sorry. I didn't hear the answer.

MR. WEINRICH: I have no further questions.

MR. McGLYNN: I just have one or two.

CROSS-EXAMINATION

Q (By Mr. McGlynn) Now, considering the question you raised about temporary-permanent job, you worked there before in a very important management position, didn't you?

A I worked there before, yes.

Q And, when you decided you had to, you just chose to leave and you left; is that a fact?

A May I speak about that?

Q No. I am asking you is it a fact, yes or no.

A I gave him notice I was leaving, and, yes, I left.

Q And there were no recriminations, no bad feelings. And when you came back and needed a job and came to him, he hired you, didn't he?

A Yes, he hired me.

Q The first time you got hired, there was no agreement that it was a permanent job, that you had to stay there, or you couldn't leave, was there?

A No.

Q So, when you wanted to leave, you left; correct?

A Yes.

Q And, when you came back, there was no hard feelings, no recriminations; they hired you back again; didn't they?

A Yes, they did.

Q So there was no discussion that this was a permanent job or temporary job. They just hired you.

A They just hired me.

Q All right.

Now, as far as Anderson is concerned, while -- would you say that a pit job, working on front end and such, is a very difficult and technical job?

A Yes, it can be.

Q So, you, of your own knowledge, have no idea what Mr. Anderson's background may or may not have been regarding transmission work, electrical work, or any of the A mechanic type of work outside of the pit?

A He spoke to me when I was service advisor; he had no knowledge of transmission, four- or five-speed transmission.

Q What about electrical work? Did he ask you about that too?

A No. He never did any electrical work.

Q As far as you know.

A He told me so.

Q Am I going to call Mr. Kiely up to indicate that he does electrical work and transmission work?

I mean, when you saw him --

A When I saw him he had spoken with me. I know he had never done this in the shop.

Q You are assuming that you had never seen him do it?

A No. Also, because he had said all the time he always wanted to be on the front of the machine. He doesn't know how automatic transmission or five-speed transmission --

MR. McGLYNN: Excuse me one second.

No further questions.

JUDGE FRIEDMAN: Can I ask a question? This may have been answered.

Between the time that you were hired the second time --

THE WITNESS: Yes.

JUDGE FRIEDMAN: -- which you were laid off, were any other A mechanics hired after you?

THE WITNESS: Yes, there were.

JUDGE FREIDMAN: Between the time that you were hired and the time that you were laid off?

THE WITNESS: No, not that time.

JUDGE FRIEDMAN: Were there any other mechanics, period, other -- the other types, any mechanics hired after you between the time you were hired and the time you were laid off?

THE WITNESS: Not that I know.

JUDGE FRIEDMAN: Yes?

MR. McGLYNN: Take the stand, please.

He is still under oath, sir.

(Witness excused.)

Whereupon,

JAMES KIELY

was recalled as a witness by the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION

Q (By Mr. McGlynn) Mr. Kiely -- well, this is a new matter that has been brought up. I had no intention of recalling him.

JUDGE FRIEDMAN: Yes.

Q You heard Mr. Thomas' testimony?

A Yes.

Q Is Mr. Anderson in fact doing work of a class A mechanic?

A Yes, he is.

Q In fact, what are his duties?

A He does front end work, does warranty work, electrical work, further struts.

Now, these can be done in the pit or on the floor on the left or wherever he chooses to do them.

He does carburetors, seals double carburetors; and

he is a qualified man.

He doesn't do the automatic transmission, but I already had him do the standard transmission.

He is very familiar with American cars.

Q And he is doing full duty as an A mechanic; is that correct?

A Right.

In fact, I sublet a lot of alignments out now so I can use him the other way.

MR. McGLYNN: I have no further questions.

JUDGE FRIEDMAN: All right.

Anything else?

MR. WEINRICH: Yes.

I would like to -- let me ask -- We have Respondent's Exhibit 1.

MR. McGLYNN: Is that marked in evidence now?

JUDGE FRIEDMAN: No -- 1?

MR. McGLYNN: The letter, we had finally agreed, could be marked in evidence.

JUDGE FRIEDMAN: Yes. And the other two have been identified but not offered or received.

MR. McGLYNN: I have No. 3 in evidence.

MR. WEINRICH: I don't have 3 in evidence.

JUDGE FRIEDMAN: No.

Why don't you put that in?

MR. WEINRICH: Are you going to move 2 and 3 in?

MR. McGLYNN: Yes.

You consent, I assume?

MR. WEINRICH: I do.

JUDGE FRIEDMAN: I will receive this. Respondent's Exhibits 2 and 3 are received in evidence.

Would you have them marked?

(Documents heretofore marked Respondent's Exhibits Nos. 2 and 3 received in evidence.)

JUDGE FRIEDMAN: Gentlemen, is there any oral argument?

MR. WEINRICH: I have to make a closing statement.

JUDGE FRIEDMAN: All right, closing statement.

If we're ready, we will then proceed.

MR. WEINRICH: Your Honor, as I stated in the beginning, the complaint in this matter alleges a violation of Section 8(a)(1) and (3) of the Act.

General Counsel has introduced testimony primarily through one witness, the discriminatee named in the complaint, Mr. Thomas.

In the case -- like in so many of our cases -- somebody isn't telling the truth. We have an issue of credibility which only you can determine.

Mr. Thomas has taken the stand and has, under oath, testified that he has engaged in union activity.

BEST COPY AVAILABLE

There has been no evidence introduced to rebut that.

It's clear that on the 19th day of May Mr. Thomas signed a union authorization card. During the week of May 12 through May 19 Mr. Thomas engaged in union activity at the Employer's premises; that, if anyone was, Mr. Thomas was the leader of the union organizational drive in a shop consisting of ten or possibly eleven men; that three quarters of Mr. Thomas' activities took place in that shop.

Through Mr. Thomas we have introduced evidence of knowledge.

Mr. Thomas has testified that on the 21st of May in a conversation with Jim Kiely he told Mr. Kiely that he was the man, he was the one who had been selected by the other employees to contact the Union, and he did it.

When Mr. Thomas testified forthrightly in response to questions which were not of a leading nature. The testimony flowed from his mouth obviously the way it happened.

During cross-examination his testimony remained unimpeached.

There was nothing introduced in the way of a prior contradictory statement or by any other known impeach technique to take away from the force of that testimony.

Further, Mr. Thomas testified three hours later he spoke to John Kiely. During the course of the conversation John Kiely said to him, "You are going to be laid off. My

brother Jim is awful angry or awful made about what you did with the union."

JUDGE FRIEDMAN: Did you say John Kiely?

MR. WEINRICH: John Kiely.

John Kiely was not called to testify in this proceeding. Therefore, the testimony of Mr. Thomas remains undenied and unrebutted, testimony which establishes further knowledge of his union activity at the time of layoff, as well as animus against him for those union activities.

That is the heart of our case. The testimony of Mr. Thomas. Again, as to that portion of the testimony, Mr. Thomas was not impeached.

There is no reason why Mr. Thomas should not be credited; and, if Mr. Thomas is credited, the only inference which can be drawn from that evidence of activity, of knowledge, and of animus is that Mr. Thomas was discharged because of his activity on behalf of Local 239, and, therefore, his layoff and -- excuse me for using the term -- discharge was in violation of Section 8(a)(1) and (3) of the Act.

Looking at Respondent's defense, it's purely an economic defense.

Respondent on May 12 discovered that it was suffering from a tremendous operating loss in its service department.

Of course, Respondent testified that it always had a loss in its service department, but it still has a loss in its service department, and it always will have a loss in its service department because it's normal to have a loss in its service department.

However, as of May 12, according to the testimony of the company accountant and one of the company's principals, they decided some action had to be taken.

The first witness the company called to testify about this action was Mr. Shea.

Interestingly enough, in his testimony, as the record will show you, when Mr. Shea was asked what advice he gave to his client, he said in substance, "You have to do something about the warranty work. You have to spread it out or shape it out," or something to that effect.

He said nothing about having to lay people off at first. First statement dealt clearly with that warranty work.

Then he was asked, were the letter -- and in the question he was asked whether he made the same recommendation concerning personnel and the reduction of personnel in the letter as he had made to Mr. Kiely on May 12.

Now, the letter, Respondent's Exhibit 1, will clearly show, as the witness admitted, that he said nothing in that letter about reducing personnel, that his answer concerning reducing personnel at the May 12 meeting was in re-

sponse to a leading question.

And I suggest that Mr. Shea, as a certified public accountant, licensed by the State of New York and certified, didn't put in his letter that he had advised his client not to reduce per- -- to reduce personnel for the very reason that he didn't say that, for the very reason that the first word out of his mouth on this witness stand was, "You have got to do something about that warranty work."

I submit that the inference to be drawn is that Mr. Thomas should be credited, that Mr. Shea's letter should be credited, that Mr. Shea's answer in response to a leading question should be thrown out, and that it should be determined that no such recommendation was made.

But, yes, you have two people laid off on the 16th. "It's our normal policy," they testified, "to lay people off at the end of the payroll period," But two people were laid off on a Friday; one person was laid off on a Wednesday, Mr. Thomas; and one person was agreeable after being laid off to working a couple of extra days until -- when he worked I am not certain.

MR. McGLYNN: One week plus two days, Mr. Weinrich.

MR. WEINRICH: But there is a deviation in policy.

I don't know why Mr. Sisto and Mr. Jimenez were laid off on Friday, possibly because of some sort of eco-

nomic reason. But the reason for Mr. Thomas' being laid off on a Wednesday becomes clear based on his statement.

Obviously, if the Company was suffering any loss, it was an afterthought to lay Thomas off when Thomas says, "It was me"; so he can always throw him in with the rest of it, and we have our economic defense.

In any event, the economic defense falls apart because the testimony from the accountant, who wasn't certain of what the figures were, was that the loss continued. Didn't help. But still there were people being hired. Yes, people in different categories, according to the Respondent, or at least in different pay scales.

But we have to also consider, if we look at Respondent's Exhibit 3, that there were still people hired at $5.50 an hour, a Victor Alpharo and Mr. -- may have been a class B mechanic, and he may have been hired on August 20. But his rate of pay was only twenty -- if it's 5.50 -- I have the copy; maybe the original says $5. I am not sure.

But, if it says 5.50, it's only 13¢ less than Mr. Thomas' rate.

MR. McGLYNN: $5.00.

MR. WEINRICH: $5.00.

Then it was only 63¢ an hour less than Mr. Thomas' rate, higher than the other B mechanics, which were only

paid $4.00 an hour.

MR. McGLYNN: I'm sorry.

The C mechanics were $4.00; the B mechanics $5.00; and the A mechanics, $6.00.

MR. WEINRICH: The B mechanics were 4?

MR. McGLYNN: No, the C were 4.

MR. WEINRICH: The C were 4.

MR. McGLYNN: The B were 5, and the A are generally 6.

MR. WEINRICH: Except for Mr. Thomas, which was 5.63.

MR. McGLYNN: Mr. Thomas said he asked for his old salary back.

MR. WEINRICH: In any event, they hired somebody at $5.00.

There was no effort made to recall Mr. Thomas to even see if he might work at a lesser salary.

True, there was no obligation. True, it also may be an indication that Mr. Thomas was laid off, except in light of the fact they lose another mechanic in Pacheco.

Mr. Thomas clearly testified that, both when he was a mechanic and a service advisor, Mr. Anderson didn't do the type of work that Mr. Thomas did. Later, because of the economy move, he did.

General Counsel submits, Your Honor, that the testimony of Mr. Thomas clearly establishes a prima facie showing of a violation of the Act; that, when the burden

of going forward switched to the Respondent to come forward with an economic defense, they came through with one that is full of holes, which means that that defense is merely a pretext, a pretext to cover up the fact that, after Mr. Thomas on May 21 confessed, probably stupidly, his role in the -- in union activities, he was terminated.

And then what are we going to do about it?

Well, we will involve Mr. Shea or involve both Mr. Kielys, and we'll involve our loss in the service department, which has always been there and will continue ad infinitum.

As a remedy, General Counsel asks that Mr. Thomas be offered reinstatement to his former position, that he be made whole by payment of back pay plus interest, and that the Respondent be ordered to cease and desist from this activity in the future and any other violation of Section --

MR. McGLYNN: Sir, naturally we're at complete odds involving an entire situation. That should have been obvious from the beginning.

The very fact is that you have here an employee -- now I will go to their case first, their alleged case.

You have here an employee who, by his own admission, had been employed by the same people before and who, upon his indicating that he was going to go out West someplace and go into business with his son, let him go on a friendly

relationship.

We then find, apparently, that didn't work out.

In the meantime, without unnecessary reflection, he had domestic difficulties; he tried working someplace else; it didn't work out.

And then he finally came back to where he worked before, and he is looking for a job. And he doesn't know what he is going to do.

Now, number one, an employee like this, as an employer, has a right to fire and lay off employees.

Now, making little of Mr. Thomas I don't intend to do. But, with that knowledge, when he told Jim Kiely that he wasn't sure what he wanted to do, that he had just left another job, without going back to what happened in the West or domestic problems, he wouldn't sign him up with the job he had before.

Now, the differential in salary, if you recall his own testimony, he said he asked for the salary he had before.

And Mr. Kiely said the same thing. That is, why there was a difference in salary rates.

Now we get to fact.

Obviously the best contention that the Government has is that allegedly on May 21 that he then told someone that he was engaged in union activity. My adversary des-

him as a leader in the union activity.

Leader he was not. He said the men in the garage had already started something. They hadn't been fired.

If they went to him, and he managed to walk across the street -- when I cross-examined him, he said there was no mention by either the men or mention by Corallo that he was to be the shop steward.

In other words, he was no leader. They didn't know anything about this.

Did they know something was going to happen on the 21st when they had the meeting with Shea?

And Shea said in his testimony that he, in the discussion with Mr. Thomas Kiely, had indicated that the work force would have to be reduced in the service department, and he underlined the loss.

The letter very frankly -- and I said this in open court when Mr. Kiely -- when this letter first came in, there had been no discussion about this.

When this letter first came in, when Mr. Kiely called me and he told me about Shea, I said, "Get me a letter." That is not a backdated letter. It's dated when it was done. This is after we received notice.

In any event, we do not have a leader here. We have a man with an erratic employment record by his own admission, by everything that is before this Board, this Judge,

this Court.

Now, nothing refutes Mr. Shea and Mr. Kiely's testimony that there was a discussion on the 12th regarding the fact that the work force would have to be reduced.

Mr. Shea is like me. I don't know how to run any body shop or mechanic shop. So, he -- generally speaking, he indicated, they discussed a reduction, and a reduction in the warranty calls.

And it was explained why.

In other words, $12 an hour for a warranty call, $18 an hour for a non-warranty. There is a 50% increase on non-warranty. So that is the logical thing. He uses men to the maximum production where you can.

All right.

Now, Mr. Kiely, James, Mr. Kiely, Tom, testified that the three brothers meet, they meet almost every night, weekday nights. They meet on several occasions.

And it was decided that they would drop a writer, who who -- without any refutation -- was a friend, you know, in close, but they had to drop one.

He indicated he would be leaving soon anyhow, so in a friendly basis they dropped a friend.

All right, we now come to an A mechanic.

All the other A mechanics, by his own admission, were there before him.

By his own actions, admissions, and by what Mr. Kiely was told, you have an employee who has been there two months, only two months, who quits on them before and indicated he doesn't know what he wants to do.

So, as Mr. Kiely, Jim, said, "Who am I going to pick out?" The only logical one he picked out regarding an A, B, C, was Mr. Thomas.

And I don't say it's illogical, but completely logical because of his work pattern and because he had personal problems and because he had only been back two months.

Now, okay, we found out this allegedly on May 21.

Now, does the Government contend that is why we fired Jimenez and Sisto on the 16th? Does that make sense?

Not at all. It's impossible. You cannot use that as your theory.

Even if they were making a mistake, which they did not, they reduced the loss to some degree.

It's easy to not go out of business with a smaller loss than with a larger loss. So what they did was intelligent.

But that is not a factor here.

The very fact that they fired two men on a Friday before, these men are not before the Board in any capacity whatsoever. There is no claim that they engaged in union activity. They were fired because we were doing something

that was a necessity.

Now comes the -- no. Before that, by his own testimony, they were giving him little jobs, cleanup jobs. Paul Sisto was fired on Friday. By his own admission, he did a little job first -- and he did a little job completing Paul's job that was left over from Friday before 12:30.

Jim -- and without any testimony or in any fashion shaking him up, Jim Kiely said, "We decided last week as to who was going."

On the same day that he was fired, Rudy got his official notice, same day, 21st, unrefuted.

He got his notice because it was part of the plan, right, wrong, or indifferent. They are entitled to execute the plan, assuming that they were doing it for their reasons, which I feel we have fully established.

By his own statement, his work was done. He had the little job that Paul, who had been fired on the previous Friday, had not finished, now, was the last thing that he had done.

In the meantime, he tells one of his employers that he wants to take the rest of the day off.

Mr. Kiely said -- and he was not shaken on that either -- that -- when he heard that, he told John that he wanted to take half a day off.

He said, "Why make the guy come back tomorrow. We're letting him go this afternoon. Let's cut the check."

He was in a different building. He went and cut the check and brought it over. His testimony -- apparently gave it to him directly or gave it to John, who handed it to him.

And the reason he got the check in the middle of the day was because he wanted half a day off. And again being decent, having hired him the second time when he quit once, having hired him when they knew he had a mixed-up problem, whether work-wise, personal-wise, whatever it might be.

I don't think they have any case whatsoever, none whatsoever.

All of this was set in motion long before there could even be the remotest showing that they had even possibly any notice of so-called union activity.

I think either or both Kielys have testified that over the years various employees have made mention of union or interest in a union. None of them were fired, or they would have been down here to see Mr. Weinrich before.

We now have one, one in many, many years, many associate companies.

And again you have to look at his credibility by the nature of the witness.

I have seen him before many times when he was at

the shop because I am there often. It's near my office.

And I don't mean to attach him personally, but he has got an axe to grind. He is looking for a lot of money and not working for it.

And suddenly on the day that he is laid off he suddenly on the day that he is laid off, he suddenly finds that he warned them that he is the leader in union activities.

Now, to me, it's ludicrous.

All of this shows that the Respondent was acting pursuant to plan and acting in good faith.

Their best claim is that we learned on the 21st.

How do they indicate that we would fire two men on the 16th?

Not that they had anything to do with it, but why would we fire them? Because we would imagine, we could surmise that on the 21st someone is going to indicate that he is a leader in union activities, so we fire two other people?

That is preposterous.

We take our most trusted employee and let him go for the reason that he said that he was going into his own business. So, knowing he wasn't going to say, who do you let go in that capacity? The writing, the management capacity.

They let go the one who was closest to them, not because there was any vendetta, obviously on good terms; because the testimony shows that he voluntarily stayed on, you know, to finish the warranty work.

All of the facts totally and completely belie what he claims, completely.

It doesn't fit. You don't do things on the 12th of May, the 13th of May, the 14th of May, the 15th of May, and the 16th day of May, and then fire two people because something is going to happen on May 21st that you don't know is going to happen.

This is ridiculous.

Now, what happens in the early part of the week? What was their attitude toward him?

It was the 21st -- that would be the 19th, which would be a Monday, he was doing little jobs, cleanup jobs, finish jobs. His last job, he said he had two little jobs on Wednesday. And he was told they didn't have more work for him.

That meant at the moment. He would be put on another little job. And Jimmy would let him know at 3:00 o'clock that he would be through, and he would have his check for the full day.

The only reason his check had to be cut all of a sudden was when he said he wanted to go home for the day, as

he said, he wanted to go home and ship some fish.

Well, a lot of employees might buy that by itself, say, "I am going to fire you if you want to go ship fish to Florida, I don't need you. I will take my secretary to do that."

The idea is that their actions are so consistent through that entire period that it totally refutes any claim made by the Complainant or by the Government.

It doesn't fit. It's impossible. They could not conjure this up. It happened before. It was an action before.

I think -- which further -- they even, on the 21st, even assuming the best, that he told someone somewhere along the line.

Now, it's funny, with all these employees kicking around, he is suddenly afraid of other employees, he said. He is suddenly afraid of the men in the parts department.

They are just as much of an employee -- if and yes and no -- as he was an employee, just in a different room.

And suddenly everything is upset because he had to save everybody because the men in the parts department knew about union activities.

I am sure Your Honor knows, if there is union activity, there is not one guy in the whole plant that doesn't know about it in two minutes.

You have been through it more than I, but once it starts it's like wildfire; either you go or don't go.

Where are they? Talk about contention about a witness not being produced.

Somebody has to run their business. Two of them are here. There is one left.

The fact is, I don't see any other employee sitting around this room. I haven't seen any of them come in here and testify.

He said a conversation took place, he indicated 12 feet away, and there was this conversation with company employees all about the place only 12 feet away.

And suddenly talking about union activity, not being too definite when and what time and where the check was, and had he been told he was through, and whether or when; said he was taking a half day off -- I was somewhat confused on that point myself.

The fact is, if there were a number of employees in the parts department, other employees and Marion, Jim's wife, who works in the office, all of these people, within 12 feet, but nobody heard that conversation, nobody.

Credibility? Where? Was he whispering so no one could hear him? Was it an imaginary conversation.

I submit respectfully that I do not believe they have established a case whatsoever.

And, even if it be considered that they have established what is considered a prima facie case; that we have so far refuted that case by facts that could not be manufactured.

Mr. Shea is a well-known CPA. His -- this was not -- I asked Tom Kiely to get that letter and to recite, you know, what his position was.

I didn't tell him to give a thorough, detailed statement, et cetera, because I wanted to know what the figures were and such.

And I wanted it from him because I inteded to use it in the answer.

As you know, we did use it in the answer as part -- as an exhibit. And I was the one that requested it.

Mr. Kiely called him, and obviously May 29 was the day he did it.

You capture his testimony where he definitely indicates that he discussed the fact that employees had to be cut down.

Subsequent actions on the 16th, 17th, 18th, 19th, 20th, 21th, every fact belies what he said.

The very fact that on the same day, the 21st, that Rudy got his termination notice -- for a reason? No. He is a family friend, but somebody had to be cut, and he was going to leave, so he was the one they cut.

BEST COPY AVAILABLE

Their actions are consistent from beginning to end. Their actions are consistent where he alone is concerned.

How many firms are nice enough to allow him to come back after quitting once, after going out West, after coming back, and quitting a job in sports cars indicating he had matrimonial problems and what not?

How many employers are nice enough to hire a man like that back?

What he asked for, his same salary, they gave it to him.

And do their -- are their actions concerning the Complainant, Mr. Thomas, such that their very actions regarding him negate the fact that, as he claims, he was suddenly fired for union activity?

Mr. Kiely swore that he picked him. Mr. Kiely indicated that he was going to end it that day.

He told us that he was doing small and cleanup jobs, the last being Paul's. They were letting him go that day. That is why he was not being given any big jobs. He was cleaning up the balance of that leftover work from the other two that were fired.

It had nothing even remotely to do with union activity.

And that, in my opinion, respectfully, that this is the wedge, the axe, something to use when you have nothing else.

And I do feel that, even in cases like this, it should be the duty of the Board not to burden you -- not to burden the Employer, not to burden Mr. Weinrich, not to burden me, and take what I consider totally unfounded self-serving statements with no backup.

I don't see one employee, no one that ever came in here and testified, just he, just he; every action on behalf of the Respondent refuting this, and nothing has he produced that refutes the course of conduct which was set into effect on May 12, and which included him by nature, the last mechanic hired, there exactly two months.

The entire set of circumstances I don't believe even warrant consideration.

And I respectfully ask that the complain be dismissed in all respects on the grounds that we have in no way violated any applicable provisions of law or the Labor Department.

JUDGE FRIEDMAN: Thank you.

Well, all right, gentlemen. Now, when I render my decision, my connection with this case is closed.

I will give you a date for briefs in the event you want briefs.

I believe there is a ten-day delivery on the transcript, and I will give you a further ten days to get whatever briefs you want in.

If you want an extension of time, indicate that to the -- make a request to the Chief Judge in Washington.

Twenty days from now makes it the 24th of December. I presume you will want some more time.

MR. McGLYNN: Could we set a date? I have -- excuse me -- I have two business trips that will --

JUDGE FRIEDMAN: Do you expect to file a brief?

MR. McGLYNN: I don't believe so. I think it's entirely factual.

I really don't think so.

I don't know about Mr. Weinrich.

Are you obligated to file a brief?

JUDGE FRIEDMAN: Well, he is not obligated yet to indicate.

MR. WEINRICH: I don't make that determination.

MR. McGLYNN: Will you keep me advised; fair enough?

I am not going to file a brief unless you are. I think that is fair.

JUDGE FRIEDMAN: Under our rules, we don't exchange briefs.

MR. McGLYNN: No. I am only asking, if he is going to put in a brief, to advise me.

JUDGE FRIEDMAN: That is between the two of you. I can't tell him.

MR. McGLYNN: Yes.

JUDGE FRIEDMAN: If he decides to file briefs, I will tell you I will extend that to the --

MR. WEINRICH: Could we go off the record a minute, Your Honor?

JUDGE FRIEDMAN: -- December 30.

Yes, off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: I think we'll leave it the 24th, gentlemen; and, if there is a request for extension of time, please address it to the Chief Judge in Washington.

I may not be present at the time that the request comes in, and he will have to act on it for me.

Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

I think that, with that, the case is closed, unless there are some other motions to be made before closing?

MR. WEINRICH: I have no other motion, Your Honor.

MR. McGLYNN: I have no other motions.

JUDGE FRIEDMAN: All right.

The case is closed.

(Whereupon, at 4:35 o'clock p.m., the hearing in the above-entitled matter was closed.)

G.C.3

International Brotherhood of Teamsters, Chauffers, Warehousemen and Help of America

LOCAL UNION 239

Automotive Electronics, Synthetic and Specialty Products Workers
252-17 Northern Boulevard, Little Neck, N. Y. 11363

I hereby request and accept membership in the above named union, and authorize it to represent me as my collective bargaining agent, and in my behalf to negotiate and conclude all agreements as to hours of labor, wages, and all other conditions of employment.

Name (print) (Mr. Mrs. Miss) James Thomas

Home Address 40-41 190th St.

Borough/Town Flushing Queens Zip 11358

Employed by Kind Sales How Long 6 mos Yrs

Firm's Address 55-11 No. Blvd. Woodside

Job Title Mechanic Rate of Pay 3.25 hr

Date 5-19-65 Signature (write) James Thomas

N.Y.C.: BAyside 5-8200
Nass. & Suff.: 516 PI 1-4477

ALL INFORMATION WILL BE HELD CONFIDENTIAL

FUSCO & SHEA
Certified Public Accountants
THE CONTINENTAL BUILDING
107-21 QUEENS BOULEVARD
FOREST HILLS, NEW YORK 11375
212 268-6643

VINCENT L. FUSCO, CPA
JOHN L. SHEA, CPA
CLIFFORD F. BAUMANN, CPA

MEMBERS
AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS

May 29, 1975

Mr. Thomas Kiely, Secretary
Kimi Sales, Ltd.
57-01 Northern Boulevard
Woodside, New York 11377

Dear Mr. Kiely,

We wish to supplement our oral review of your company's financial position as of April 30, 1975.

During our discussion held at your office on May 12, 1975, we advised you of a net loss for the four months ending April 30, 1975 in the amount of $5,489. We further advised you that the loss, departmentally, occured as follows:

Operating Income:	New Car Department	$11,287.
	Used Car Department	$1,414.
	Parts Department	$12,093.
Operating Loss:	Service Department	(28,972.)
Net Operating Loss:		$4,172.
Non-operating Deductions (net)		$1,311.
Net Loss		$5,489.

Since the service department losses have been consistent during the current period, we advised immediate steps to reduce the cost of operating your service department. We pointed to the peril of an uncertain market for new cars, coupled with a sub-standard service operation.

Our mutual conclusion was that you would immediately review your service operation with a view toward, at the least, reducing its current operating loss to a manageable figure compared to the overall operation.

We hope that you have taken positive steps to control this weak spot in your operation. Should you require additional information, we would be pleased to meet with you at your convenience.

Very truly yours,

Fusco and Shea

John L. Shea

RESPONDENT'S EXHIBIT #1

R-2 2V 12/4/75 FAV

FIAT DISTRIBUTORS, INC.

DEALER FINANCIAL STATEMENT

COVERING PERIOD FROM 1/1/75 THRU 4/30/75 DEALER KIMI SALES LTD.

CODE NUMBER 3736-1 CITY WOODSIDE STATE N.Y.

FRANCHISES — FIAT [X] — LANCIA [ ] — OTHER LINES DATSUN

ASSETS	ASST. NO.	AMOUNT	LINE NO.	LIABILITIES	ACCT. NO.	AMOUNT
CURRENT ASSETS:			1	CURRENT LIABILITIES		
CASH			2	ACCOUNTS PAYABLE		
On Hand	200-1	320	3	Trade Creditors	300	23113
In Bank	202	1371	4	Accts. Rec. Credit Balances	220	
CONTRACTS IN TRANSIT	205	5700	5	Customer Deposits Number ( )	220	1550
Total Cash and Contracts (LINES 2-5 INC.)		7391	6			
RECEIVABLES			7	NOTES PAYABLE		
Customer Notes – Not Due	210		8	New Vehicles and Demonstrators	310	256791
Customer Notes – Past Due	210		9	Used Vehicles	312	
Customer Accounts – Not Due	220	8439	10	Other	314	
Customer Accounts – Past Due	220		11	Memo (NOTES PAYABLE SECURED BY CUSTOMER NOTES IN ACCT. 210 $)		
Other Receivables – Distributor	221		12			
Total Receivables		8439	13	ACCRUED LIABILITIES		
Less: Allowance for Doubtful Accounts	340	(2834)	14	Interest	320	
Net Receivables		5605	15	Payroll	321	
			16	Insurance	322	
Memo (VEHICLE NOTES IN ACCT. 210 $)			17	Taxes – Payroll	323	6274
(VEHICLE ACCTS. IN ACCT. 220 $)			18	Taxes – Sales	324	31617
Accounts Payable Debit Balances	300		19	Taxes – Other than P/R, SLS & Inc.	325	500
Total Receivables (LINES 13, 14 & 19)		5605	20	Income Taxes – Previous Year	326	
INVENTORIES			21	Income Taxes – Current Year	327	
*Demos – Fiat ( ) – Lancia ( )	230A		22	Bonuses – Employes	328	
*Demos – Other ( )	230B		23	Bonuses – Owners	329	
*New Vehs – Fiat (43) – Lancia ( )	231A	136459	24	Pension Fund	330	
*New Vehs – Other (26)	231B	94727	25	Other	331	415
			26			
*Used Vehs – Fiat – Lancia ( ) OVER 30 DAYS ( )	240A		27	Total Current Liabilities (LINES 2 TO 26 INC.)		270260
*Used Vehs – Oth. Mks. (7) OVER 30 DAYS (4)	240B	5451	28	LONG TERM DEBT	334	91825
Parts & Acc. – Fiat – Lancia	242A	55747	29	MORTGAGES PAYABLE	335	

	Parts & Acc.–Fiat–Lancia	242A	55 747	29	MORTGAGES PAYABLE	335	
	Parts & Acc.–Other	242B		30			
	Gas, Oil and Grease	244	1357	31	Total Long Term Debt (LINES 24 TO 30)		91 225
	Paint and Body Shop Materials	245	2456	32	Total Liabilities (LINES 27 AND 31)		362 445
	Sublet Repairs	246	175	33			
	Work in Process – Labor	247	1000	34	NET WORKING CAPITAL		
	Miscellaneous Assets Received in Trade	248		35	$ 67 324.		
	Tires and Tubes	249	3914	36	ASSETS LINES 52 PLUS 53 MINUS LIABILITIES LINE 27		
	Non-Automotive Merchandise	250		37			
				38	NET WORTH		
	Total Inventories (LINES 22 TO 29 INC.)		300 286	39	CORPORATION ONLY		
	SECURITIES	260		40	CAPITAL STOCK	360	470
	DISCOUNTS RECEIVABLE	261		41	RETAINED EARNINGS	370	16 977.
	DUE FROM FINANCE COMPANIES	262	2377	42	ADDITIONAL CAPITAL		33 681
	FAC. CLMS. F. L. OT.	263	13 338	43			
	INSURANCE COMMISSIONS RECEIVABLE	264		44			
	PREPAID EXPENSES Advertising	269	2850	45	DIVIDENDS	375	
	Taxes	270	622	46	PROPRIETOR OR PARTNER		
	Insurance	271	439	47	INVESTMENTS (LIST EACH PARTNER)	380	
	Rent	272	3650	48			
	Interest	273		49			
	Other	274		50			
	Total Prepaid Expenses (LINES 45 TO 50 INC.)		7537	51			
	Total Current Assets (LINES 6, 20, 30, 43, 44, 45, 48, 49 & 51)		337 524	52	DRAWINGS (LIST EACH PARTNER)	390	
	☆ LEASE AND RENTAL UNITS ( )	277		53			
	FIXED ASSETS – AUTO BUSINESS ONLY			54			
				55			
				56			
				57	CURRENT EARNINGS BEFORE INCOME TAXES		
				58			
				59			
				60			
				61			
				62			
				63			
				64		399	(5429)
				65			
				66			
				67			
				68			
				69			
				70			

ACCT. NO.	COST	ACCUMULATED DEPRECIATION		MO.	NEW UNITS	USED UNITS	PROFIT (LOSS)
LAND				JAN.	26	3	(4593)
				FEB.	29	1	(4459)
	17 451	10 727	6723	MAR.	47	1	4114
	2247	528	1719	APR.	47	3	(1225)
	8117	3895	4221	MAY			
	733	289	444	JUN.			
	6208	2601	4477	JUL.			
	2134	269	1915	AUG.			
TOTAL	72 892	33 231	59 561	SEP.			
				OCT.			
				NOV.			
				DEC.			

☆ Memo–Service Units: Cars ( ) Trks ( )

OTHER ASSETS			
Deposits on Contracts	290	10 737	
Life Insurance – Cash Value	291		
Notes and Accounts Receivable–Officers	293		
Advances to Employees	294		

BEST COPY AVAILABLE

PAGE 2

STATEMENT OF INCOME AND EXPENSE

DEP

LINE NO.	NAME OF ACCOUNT	ACCT. NO.	MONTH	GROSS PROFIT % OF SALES	YEAR TO DATE	GROSS PROFIT % OF SALES	A-NEW VEHICLE DEPARTMENT MONTH	A-NEW VEHICLE DEPARTMENT YEAR TO DATE	LINE NO.
1	NET SALES		225 278	X	732 058	X	162 486	511 724	1
2	GROSS PROFIT		43 910		155 097		22 825	79 557	2
3	Insurance Commissions Earned	805							3
4	Finance Income	807	426		1244		426	1244	4
5	Repossession Losses	353	( )		( )		( )	( )	5
6	OPERATING INCOME (LINES 2-5)		44336		156341		23251	80801	6
7	VARIABLE SELLING EXPENSES			PER NEW UNIT SOLD		PER NEW UNIT SOLD			7
8	Salaries-Salesmen	10	3776		12369		3776	12369	8
9	Commission-Salesmen	11							9
10	Other Compensation-Salesmen	12							10
11	Delivery Expense	13	2640		7736		2640	7736	11
12	Installing Access. New Vehicle	14	27		58		27	58	12
13	Policy Work - Vehicles	15	(271)		98		(271)	98	13
14	Interest - Floor Planning	16	1781		6943		1781	6943	14
15	Free Inspection	17							15
16	Advertising	18	2924		6732		2924	6732	16
17									17
18	TOTAL VARIABLE SELLING EXPENSE		10877		33936		10877	33936	18
19	FIXED OVERHEAD EXPENSES			EXPENSE % OF SALES		EXPENSE % OF SALES			19
20	Salaries - Owners	20	1794		6708		598	2236	20
21	Salaries - Supervision	21	5510		20587		1082	4090	21
22	Salaries - Clerical	22	3352		12113		1246	4425	22
23	Other Salaries and Wages	23	4529		17052		1182	4271	23
24	Absentee Wages-Productive Personnel	24							24
25									25
26	TOTAL SALARY & WAGE EXPENSE		15 185		56460		4108	15 022	26
27	Used Vehicle Maintenance Expense	33							27
28	Demonstration Expense	50							28
29	Company Vehicle Expense	51	10		1105		10	92	29
30	Stationery & Office Supplies	60	43		902		23	365	30
31	Other Supplies	61	1876		4350		36	317	31
32	Contributions	66							32
33	Policy Work - Parts and Service	67	159		351				33
34	Outside Services	68	157		1227		58	266	34
35	Travel and Entertainment	70	25		134		25	134	35

35	Travel and Entertainment	70	23		134		25	134		35
36	Memberships, Dues and Publications	71								36
37	Legal and Auditing Expense	72	825		2800		207	1700		37
38	Freight, Express & Cartage	73	261		900					38
39	Telephone and Telegraph	74	1379		5562		528	2180		39
40	Postage	75	796		3631		105	983		40
41	Miscellaneous Expense	76								41
42	ADVERTISING		211		863					42
43	TOTAL SEMI-FIXED EXPENSE		5742		21825		992	5037		43
44	Rent	80	3500		13820		1160	4640		44
45	Amortization – Leaseholds	81	186		744		56	223		45
46	Repairs – Real Estate	82	74		379			83		46
47	Depreciation–Bldgs. and Improvements	83								47
48	Taxes – Real Estate	84								48
49	Insurance–Buildings and Improvements	85	150		600		45	180		49
50	Subtotal–Rent & Rent Equiv. Exp.		3910		15603		1261	5126		50
51	Heat, Light, Power and Water	87	1406		6147		315	1965		51
52	Ins.–Other than Bldg. & Improv.	88	1650		6600		495	1980		52
53	Taxes–Other than Real Est. & Inc.	89	4008		14324		1060	3662		53
54	Repairs – Equipment	90	864		864					54
55	Deprec.–Oth. than Bldg. & Improv.	91	112		448		34	136		55
56	Equipment Rental	92								56
57	Employee Benefits	95	705		2512		241	850		57
58	Pension Fund	96	500		1800		500	1800		58
59										59
60										60
61	TOTAL FIXED EXPENSE (LINES 50 TO 60 INCL.)		13155		42293		3406	15519		61
62	TOTAL FIXED OVERHEAD (LINES 26, 43 & 61)		34032		126513		9006	35578		62
63	TOTAL EXPENSES (LINES 18 & 62)		44959		160519		19883	67514		63
64	DEPARTMENTAL PROFIT OR LOSS						3368	11287		64
65	(NO INDIRECT EXPENSE PRORATION NECESSARY)									65
66										66
67	OPERATING PROFIT OR LOSS		(623)		(4178)					67
68	Net Additions & Deductions (LINE 75 PAGE 3)		(577)		(1311)					68
69	NET PROFIT OR LOSS BEFORE BONUSES & INCOME TAXES		(1220)		(5489)					69
70	Bonuses - Employes DR. BAL. BLACK CR. BAL. RED 97									70
71	Bonuses – Owners DR. BAL. BLACK CR. BAL. RED 98									71
72	NET PROFIT OR LOSS BEFORE INCOME TAXES		(1220)		(5489)					72
73	Income Taxes Curr. Yr. DR. BAL. BLACK CR. BAL. RED 99									73
74	NET PROFIT OR LOSS AFTER INCOME TAXES		(1220)		(5489)					74
75	MEMO:									75
76	TOTAL ADVERTISING EXPENDITURES - MONTH &		211		863					76

OPERATING PROFIT OR LOSS SUMMARY

DEPT.	MONTH	YEAR TO DATE
A (LN 64)	3368	11287
B (LN 64)	1169	1414
C (LN 64)	(8408)	(25972)
D (LN 64)	3248	12093

PAGE 3

	B–USED VEHICLE DEPARTMENT		C–SERVICE DEPARTMENT		D–PARTS AND ACCESSORIES DEPARTMENT		Z–INDIRECT EXPENSES	
	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE
	1715	10670	23173	97781	33024	121833		
	1169	1414	8525	32168	11391	41958		
806								
807								
853	( )	( )						
	1169	1414						
10								
11								
12								
13								
14								
15								
16								
17								
18								
20			598	2236	598	2236		
21			2748	12290	1680	4207		
22			1053	3844	1053	3844		
23			1674	6390	1673	6391		
24								
			6073	24760	5004	16678		
33								
70								
51				327		634		
60				337	20	200		
61			1809	3636	31	397		
65								
67			159	351				
68			99	961				
70								

PERSONNEL

CODE	DESCRIPTION
1.	OFFICERS OR OWNERS
2.	MANAGEMENT
3.	SALESMEN
4.	CLERICAL
5.	OTHER
6.	MECHANICS
7.	

FOLLOW CODES

	DEPARTMENTS					
	A	B	C	D	Z	Tot.
1.	1/3		1/3	1/3		1
2.	1		2½	1½		5
3.	3					3
4.	1/3		1⅓	1⅔		3
5.	1⅓		1⅔	1⅔		5
6.			15			15
7.						
TOT.	6		22	4		32

70										
71										
72			412	1400	206	700				
73					261	900				
74			553	2133	298	1249				
75			631	2237	60	411				
76										
			106	444	105	419				
			3769	11828	981	4960				
80			1540	6040	800	3200				
81			93	372	37	149				
82			74	296						
83										
84										
85			75	300	30	120				
			1782	7008	867	3469				
87			881	3592	210	570				
88			825	3300	330	1320				
89			2361	8546	587	2116				
90			864	864						
91			56	224	22	88				
92										
95			322	1018	142	644				
96										
			7391	24552	2158	8227				
			16733	61140	8143	29865				
			16933	61140	8143	29865				
	1169	1114	(9408)	(33772)	3248	1293				

ADDITIONS TO INCOME

ACCOUNT	ACCT. NO.	MONTH	YEAR TO DATE
Cash Discount Earned	800	105 -	462
Interest Earned	801		
Bad Debts Recovered	802		
Other Income	805	14	57
Tourist Comm. [ ] NO. MO. [ ] NO. Y.T.D.	808		
Lease & Rental Units Income	809		

DEDUCTIONS FROM INCOME

ACCOUNT	ACCT. NO.	MONTH	YEAR TO DATE
Interest	851		
Adj. Doubtful Accounts	852		
Other Deductions	855	716	1330
Lease & Rental Units Expense	859		

BEST COPY AVAILABLE

UNITS SOLD	SALES	GROSS PROFIT	PER UNIT SOLD	DESCRIPTION	ACCTG. SALES CODE	UNITS SOLD	SALES	GROSS PROFIT	PER UNIT SOLD
				NEW VEHICLES					
1	4210	428		Fiat - X 19	400	3	12590	1641	
4	13 920	2475		Fiat 124 4DR.	402	24	78 226	14 970	
1	5150	794		Fiat 124 SPIDER	404	4	18 261	2766	
19	54 157	7767		Fiat - 128	406	55	154 452	24 970	
				Fiat -	408				
	2008	673		ACCESSORIES			8525	2988	
25	79 445	12 134		TOTAL - NEW FIAT		86	272 054	47 335	
				Lancia	410				
				Lancia	412				
				Lancia	414				
				TOTAL NEW LANCIA					
				TOTAL NEW FIAT/LANCIA					
22	84041	10 691		New - Other Makes	416	63	239 670	32 222	
22	84041	10 691		TOTAL NEW OTHER		63	239 670	32 222	
47	163 486	22825		TOTAL NEW VEHICLE		149	511 724	79 557	
				USED VEHICLES					
3	4795	1495		Used - Retail	430	6	8 070	3170	
X	X	(326)		Used - Ret. Recond.	631	X	X	(1273)	
				Used Wholesale	433	2	2600	(458)	
X	X	( )	X	Adj. Used Veh. Inv.	634	X	X	( )	X
3	4795	1169		TOTAL USED		8	10 670	1414	
50	168281	23 994		TOTAL NEW AND USED		157	522 394	80 971	
X	X	X	PER NEW UNIT SOLD	X		X	X	X	PER NEW UNIT SOLD
R.O.	X	X	GROSS PROFIT % OF SALES	SERVICE-FIAT/LANCIA		R.O.	X	X	GROSS PROFIT % OF SALES
323	12 936	5049	1	Mechanical Labor	450A	1217	41 962	13 651	1
43	6073	2078	1	Body Shop Labor	452A	115	23 563	9717	1
	1846	913	1	Factory Claim Labor	454A		7617	4158	1
	2135	754	1	Internal Labor	455A		9512	3270	1
	963	312	1	Sublet Repairs	456A		5047	1292	1
391	23 953	8505	1	TOTAL SERVICE-FIAT/LANCIA		1332	27 701	32 088	1
R.O.	X	X	X	SERVICE - OTHER		R.O.	X	X	X

R.O.			SERVICE - OTHER		R.O.			
			Mechanical Labor	450B				
			Body Shop Labor	452B				
			Factory Claim Labor	454B				
			Internal Labor	455B				
			Sublet Repairs	456B				
			TOTAL SERVICE-OTHER					
			Adj.-Cost of Labor Sales	657				
	30	20	Miscellaneous	459		20	80	
	22 972	8525	TOTAL SERVICE			87 731	32 168	
			PARTS & ACC.-FIAT/LANCIA					
	5246	2652	P & A - R.O.	460A		19 840	9 124	
	5837	1700	P & A - Body	462A		19 232	5 344	
	2229	571	P & A - Factory Claims	464A		8 799	1727	
	460	84	P & A - Internal	465A		1 929	247	
	3621	1734	P & A - Counter	466A		14 730	6 277	
	12421	4062	P & A - Wholesale	467A		49 986	16 725	
			Stock Order Allowance	659A				
			Adj.-P & A Inventory	675A				
	30 98[illegible]	19 807	TOT. PTS. & ACC.-FIAT/LANCIA			114 472	40 064	
			PARTS & ACC. - OTHER					
			P & A - R.O.	460B				
			P & A - Body	462B				
			P & A - Factory Claim	464B				
			P & A - Internal	465B				
			P & A - Counter	466B				
			P & A - Wholesale	467B				
			Stock Order Allowance	669B				
			Adj.-P & A Inventory	675B				
			TOTAL PARTS & ACC.-OTHER					
	30 980	19 807	TOTAL PARTS & ACCESSORIES			114 472	40 064	
			Tires	481				
	1252	345	Gas, Oil and Grease	490		4 631	1090	
	189	91	Paint & Body Material	491		975	307	
	604	193	Miscellaneous	492		1778	477	
			Non-Automotive Misc.	493				
	2044	629	TOTAL MISC. (Lines 481 thru 493)			7 411	1874	
	33 024	11 391	TOTAL P&A Dept. (Lines 460 thru 493)			121 883	41 938	
	56 997	19 918	TOTAL SER. P&A (Lines 450 thru 493)			207 647	74 426	
	[illegible]	[illegible]	GRAND TOTAL (Lines 450 thru 493)			[illegible]	[illegible]	

BEST COPY AVAILABLE

Reps EV

				Fired	
	[illegible] Gregory	Lic-Off	5-16-75	10/22/74	Mech.
	Jack Bate	Lic-Off	5-16-75	1/29/75	Mech.
	Lance Thomas	Lic-Off	5-21-75	3/24/75	Mech.
	Gary Pitts	Lic-Off	5-20-75	11/6/75	Firing Pin
	Jerrie Graham	Lic	6-25-75		Mech.
	Mark Anderson	Lic-Off	8-20-75	12/12/74	Chip Relief
	Paul Carlin	Lic-Off	10-15-75	"	Relief
	Victor Olsen	Lic-Off	Rev 8-20-75 9-25-75		Mech.
	Mark Palombaro	Lic-Off	Rev 10-14-75 11-10-75		Chip Relief Improp. Assembly
	Randy Ford				
	Nick Bartos		8-13-75		Mech Relief
	Granados, Ken		9-9-75		Mech.
	Hopkins, R.		11-20-75		Mech. Relief
	Blakin, Louis		11-24-75		Mech. Relief

BEST COPY AVAILABLE